No. 12865

See vol. 2728

United States
Court of Appeals
for the Ninth Circuit

PIOCHE MINES CONSOLIDATED, INC., PIOCHE MINES COMPANY, JOHN JANNEY and RICHARD K. BAKER,

Appellants,

vs.

FIDELITY-PHILADELPHIA TRUST COMPANY, Trustee, and E. CLARENCE MILLER and EDWARD C. DALE,

Appellees.

Transcript of Record

In Three Volumes

Volume I

(Pages 1 to 440)

Appeal from the United States District Court
for the District of Nevada

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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For the Appellees:

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1500 Walnut Street,
Philadelphia 2, Pa.

In the District Court of the United States
in and for the District of Nevada

No. 101—Civil Action

FIDELITY - PHILADELPHIA TRUST COMPANY, Trustee, and E. CLARENCE MILLER and EDWARD C. DALE,

Plaintiffs,

vs.

PIOCHE MINES CONSOLIDATED, INC., PIOCHE MINES COMPANY and JOHN JANNEY,

Defendants.

COMPLAINT

To the Honorable, the Judge of Said Court:

Fidelity-Philadelphia Trust Company (hereinafter sometimes called "Fidelity"), Trustee, and as Trustee under an express trust created by virtue of certain agreements, supplemental agreements and modified agreements hereinafter referred to and copies of which are attached hereto, brings this action at the request and on behalf of the holders of Debentures issued by Pioche Mines Consolidated, Inc. (hereinafter sometimes called "Pioche Consolidated"), one of the defendants, as hereinafter will more particularly appear, and also as a member of a class of unsecured creditors on behalf of itself and any and all other unsecured creditors who desire to join herein and share the expenses hereof.

E. Clarence Miller and Edward C. Dale (herein-

after called "Stockholders"), both stockholders of Pioche Consolidated, bring this action on behalf of themselves and any and all other stockholders who desire to join herein and share the expenses hereof.

I.

Jurisdiction

Jurisdiction is founded on diversity of citizenship and amount.

Fidelity-Philadelphia Trust Company is a corporation incorporated under the laws of the Commonwealth of Pennsylvania, with its principal office in the City of Philadelphia, Pennsylvania, and E. Clarence Miller and Edward C. Dale are citizens and residents of said State.

Pioche Mines Consolidated, Inc., and Pioche Mines Company (hereinafter sometimes called "Mines Company") are both corporations incorporated under the laws of the State of Nevada, with their principal offices in the Town of Pioche, Lincoln County, Nevada, and John Janney is a resident of the Town of Pioche, Lincoln County, Nevada, and a citizen of said State.

The matters in controversy between each of the plaintiffs and each of the defendants exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

II.

Class Actions

Fidelity is a member of a class of unsecured creditors so numerous as to make it impracticable to bring them all before the court and this suit by Fidelity

will fairly insure the adequate representation of all creditors of the same class in that the appointment of a receiver of the properties is sought for the purpose of adjudicating the claims of all creditors.

* * * * *

Each of the plaintiffs has a several claim against each of the defendants. The object of the action is the adjudication of claims which do or may affect specific property involved in the action, and there are common questions of law or fact affecting the several rights, and a common relief is sought.

* * * * *

IV.

Parties

A. Fidelity.

Fidelity is Trustee under Agreement dated as of January 2, 1929, with Pioche Consolidated (a copy of which is attached hereto, marked Exhibit "A") which provides for the issue of $500,000. of Five Year Seven Per Cent Convertible Debentures maturing January 1, 1934 (hereinafter referred to as "Debentures of '29"). Two Supplemental Trust Agreements were entered into between said parties, one dated August 31, 1932 (a copy of which is attached hereto, marked Exhibit "B") and the other dated April 1, 1936 (a copy of which is attached hereto, marked Exhibit "C"). Debentures to the aggregate principal amount of $476,300. have been certified by Fidelity under said Agreement and Supplemental Agreements and delivered to Pioche Consolidated, and still remain outstanding and unpaid.

Fidelity is also Trustee under Agreement dated

as of October 1, 1930, with Pioche Consolidated (a copy of which is attached hereto, marked Exhibit "D") which provides for the issue of $1,000,000. of Convertible Seven Per cent Sinking Fund Gold Debentures maturing October 1, 1937 (hereinafter referred to as "Debentures of '30"). Two Supplemental Trust Agreements were entered into between said parties, one dated August 31, 1932 (a copy of which is attached hereto, marked Exhibit "E") and the other dated April 1, 1936 (a copy of which is attached hereto, marked Exhibit "F"). Debentures to the aggregate principal amount of $211,000. have been certified by Fidelity under said Agreement and Supplemental Agreements and delivered to Pioche Consolidated, and still remain outstanding and unpaid.

At the request of Pioche Consolidated a very large majority of the debentureholders gave that company the option to issue scrip in exchange for coupons commencing with the coupons dated July 1, 1931 and extending down to and including the coupons dated July 1, 1937 (see debentureholders agreement attached to Exhibits "B" and "E"). The company elected to make the exchange on each of the maturity dates included in said period and of the $273,626.50 of interest coupons maturing within the dates named, $269,503.50 have actually been exchanged. As provided in the scrip certificates, the coupons so exchanged have been kept alive for the protection of the scrip holders. The scrip certificates originally issued were payable on January 1, 1934 but have twice been extended, the second extension

being until October 1, 1941—the extended due date of the debentures of both issues. (A copy of the scrip certificate in its extended form is attached hereto marked Exhibit "G").

Pioche Consolidated has defaulted in the payment of the coupons appertaining to the Debentures of '29 which matured on January 1 and July 1, 1938, January 1 and July 1, 1939, and January 1, 1940, and also the coupons appertaining to the Debentures of '30 which matured on April 1 and October 1, 1938 and April 1 and October 1, 1939. Fidelity, Trustee as aforesaid, in accordance with the provisions of said Agreements and Supplemental Trust Agreements, upon the Written Request of the holders of more than 50% in aggregate principal amount of the outstanding Debentures of each of said issues (a copy of which is attached hereto, marked Exhibit "H") on or about June 21, 1939 gave written notice to Pioche Consolidated declaring the principal of all of the outstanding Debentures of both of said issues to be due and payable immediately and made written demand upon Pioche Consolidated for the payment to Fidelity, for the benefit of the holders of the Debentures and interest coupons then outstanding, of the whole amount due and payable on all such outstanding Debentures of both issues and the interest coupons appertaining thereto, with interest upon overdue instalments of interest at the rate of 7% per annum, and in addition thereto, such further amounts as shall be sufficient to cover costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys

and counsel, which payment has been refused. (A copy of said Written Demand is attached hereto, marked Exhibit "I").

The holders of more than $450,000. in aggregate principal amount of the outstanding Debentures, including more than 50% of the debentures of each issue, executed and delivered to Fidelity Pioche Debenture-holders' Agreement dated as of February 1, 1939 (a copy of which is attached hereto, marked Exhibit "J", and which is hereinafter referred to as "Debenture-holders' Agreement of February 1, 1939") by which, among other things, they requested Fidelity, if Pioche Consolidated failed to pay the amounts due forthwith upon demand, to institute such action or actions, proceeding or proceedings at law or in equity, as may be advised by counsel for the protection of the debenture-holders, and the collection of the sums so due and unpaid as provided in the said two Trust Agreements. By this Debenture-holders' Agreement a Debenture-holders' Committee composed of Percy H. Clark, Chairman, Albert P. Gerhard and Robert F. Holden was appointed. The powers of the Committee were defined and Fidelity was directed not to bring suit until the Committee should have a reasonable time within which to negotiate an arrangement or settlement in the manner provided in the Agreement. This Complaint has been filed pursuant to the request of the Debenture-holders' Committee.

* * * * *

V.

History Prior to Consolidation

1. The properties now owned or controlled by Pioche Consolidated were originally assembled by the Exploration Syndicate. John Janney was and still is the representative and leader of this group. Sometime in 1907 this group organized the Pioche Mines Company, which purchased the West End group of mining claims located to the west of the Town of Pioche by the issue of part of its authorized stock to the Syndicate. At a latter date the Syndicate conveyed the Wide Awake Mine located to the east of the Town of Pioche, to Mines Company and at a still later date started the construction of a mill on a site adjoining the Pioche Railway Station of the Union Pacific Railroad. Mines Company for some years financed its requirements by the sale of treasury shares, and when these shares became exhausted, by the sale of shares loaned to it by the Exploration Syndicate. By the Fall of 1928 Mines Company was unable to raise additional funds, having exhausted all of its treasury stock and being indebted to the Exploration Syndicate to the amount of $380,826.94. The Exploration Syndicate by that time had acquired the following additional groups of claims: The Poorman and Toledo-Pioche groups located east of Pioche; Nevada-Des Moines group located north of Pioche; and the Gold Crown group, located west of Pioche; and also a lease from Amalgamated Pioche Mines and Smelters Corporation, Limited (hereinafter referred to as "Amalgamated") of the properties comprising the Early Day Mines of Pioche located to the south of Pioche. The partly

completed mill was owned 51% by Mines Company and 49% by the Syndicate which had erected a tramway connecting the mill with the Early Mines leased from Amalgamated. The Syndicate had also acquired a large controlling interest in the capital stock of Nevada Volcano Mines Company, which owned the Volcano group of claims located adjoining the Wide Awake Mine and the Toledo-Pioche group of claims to the East of Pioche, and this stock was held by John Janney under an unrecorded declaration of trust (known as the Volcano Trust) for the benefit of the stockholders of Pioche Mines Company. (See paragraphs VI and XII B of this Complaint). (Copies of said Declaration of Trust dated July 15, 1920, and the amended Declaration of Trust dated February 24, 1925, are attached hereto, marked Exhibit "K").

VI.

Consolidation

In December, 1928 a consolidation plan was agreed upon by parties representing the Mines Company, the Exploration Syndicate and others, which provided for (a) the incorporation of a new company to be called Pioche Mines Consolidated, Inc. with an authorized capital stock of 2,500,000 shares of the par value of $5. each; (b) the issue of 1,000,000 shares of said stock for the purchase of the properties and claims of the Syndicate, including the Syndicate's claim of $380,826.94 against Mines Company, which the plan provided should be held until such time as all of the Mines Company shares shall be acquired by Pioche Consolidated, when the ob-

ligation shall be cancelled (said claim is hereinafter referred to as the "$380,826.94 claim"); (c) the setting aside of 1,000,000 shares of stock to be offered in exchange for the outstanding 1,000,000 shares of stock of Mines Company to which the right to the Nevada Volcano Mines Company stock held under the Volcano Trust attached (see end of paragraph V and also paragraph XII-B of this Complaint); and (d) the balance of the authorized capital stock amounting to 500,000 shares to be held for the conversion of debentures and for future financing.

* * * * *

VIII.

Financing

The operations of the Consolidated enterprise were brought to an abrupt close on September 16, 1929, when the mill was partly destroyed by fire. This catastrophe, coming as it did at the beginning of the depression, left the Company in bad financial condition.

Efforts were made from time to time to raise funds first by the sale of convertible Debentures of '30, and later by borrowing on open book account and on notes and by sales of stock. The mill building was reconstructed after the sale of the Debentures of '30 but it has never been equipped to operate on a commercial basis. A number of small subscriptions to the capital stock has been received and Pioche Consolidated has borrowed very substantial sums from time to time, the exact amounts of which are unknown to plaintiffs, but the maintenance of an organization in Pioche absorbed the money as fast as it came in and there never has been a suf-

ficient amount on hand at any one time to finance the construction and development work which constitute the necessary prerequisite to placing the Company in production on a commercial basis. This method of hand to mouth financing has proven entirely inadequate to meet the financial requirements of the Company, and very expensive.

In 1933 the Daly East gold vein located on the Toledo-Pioche group of claims above referred to, was opened and shipments of ores from this development returned $6,961.71 in gold and $1,501.59 in silver, and later a small unit was installed in the mill, and in 1936, 1937, and the first two months of 1938, an experimental operation was conducted on a small tonnage basis which yielded net returns of over $310,000. These particular operations, as well as the whole Consolidated enterprise, have been conducted at a great loss, Pioche Consolidated and its subsidiary Mines Company are unable to pay their debts as they mature, have become insolvent and have suspended their business for want of funds to carry on the same, all of which is greatly prejudicial to the interests of their creditors and stockholders.

* * * * *

XI.

Debenture-Holders' Agreement of February 1, 1939

No report having been made to the debenture-holders by the Company subsequent to the issue of the Reorganization Agreement and Plan of January 26, 1938, a group of debenture-holders held a meeting in December, 1938, and determined to take

action for the protection of their interests. As a result of the meeting Debenture-holders' Agreement of February 1, 1939 (Exhibit "J" hereto) was prepared and became operative when it had been signed by the holders of more than 50% of the outstanding debentures of each of the two issues above referred to. The original counterparts of said Agreement, signed by the holders of over $450,000. of debentures, have been delivered to Fidelity in accordance with its terms, and $514,100. of debentures, $269,503.50 of overdue coupons held as security for outstanding scrip and $223,772.50 of scrip have been deposited with Fidelity, to be held under said Agreement.

The Debenture-holders' Committee named in said Agreement held several meetings in April and May, 1939, with John Janney and others, and all parties agreed it would be for the best interests of all concerned, including debenture-holders, other creditors and stockholders, to avoid litigation and to negotiate an agreement for the recapitalization and financing of the Company. At the request of the Committee John Janney agreed to an audit of the accounts and records by Barrow, Wade, Guthrie & Co., public accountants, and to an examination of the legal titles, and he later approved of Messrs. Ham and Taylor, attorneys of Las Vegas, to make the title examination. Janney asked for time within which to prepare for these examinations and went to Pioche on or about June 23, 1939, but was not ready for the examination until October. The report of the accountants was received by the Committee early in November, but the final report of the title attorneys

was not received until about the middle of December. The reports disclose gross mismanagement and waste and John Janney has again failed to make a full disclosure of material facts as requested by the Committee and has failed to cooperate with them in other respects. The Committee, having decided that nothing will be accomplished by further delay, requested Fidelity and Stockholders to bring suit and this Complaint is in response to that request.

XII.

Mismanagement

* * * * *

E. The $380,826.94 Claim.

On or about December 3, 1938, when Mines Company owed Pioche Consolidated the above mentioned $380,826.94 claim, the dummy Board of Directors of Pioche Consolidated passed a resolution waiving, postponing and extending all obligations owing to it by Mines Company until after Mines Company shall be fully repaid sums of money it had borrowed or would borrow to lend to Pioche Consolidated. On said date the said John Janney, and R. K. Baker of Boston, Massachusetts were creditors of Mines Company on account of advances theretofore made by them through Mines Company to Pioche Consolidated, and on said date Pioche Consolidated and Mines Company were unable to pay their debts as they matured, were insolvent, or their insolvency was imminent. Thus the aforesaid postponement of the $380,826.94 claim of Pioche Consolidated against Mines Company constitutes illegal preference in favor of said John Janney and R. K. Baker and should be set aside.

The above-mentioned failure of the said John Janney as President of Pioche Consolidated and his dummy Board of Directors to maintain and not subordinate the above-mentioned claim of $380,826.94 against Mines Company constitutes wilful and wrongful mismanagement of said Pioche Consolidated.

* * * * *

XIV.

Pioche Consolidated's Debt to Fidelity

In accordance with the Supplemental Trust Agreements above referred to, and the Debenture-holders' Agreement and other documents attached thereto, and the elections exercised by Pioche Consolidated thereunder, the maturity dates of the Debentures of '29 and the Debentures of '30 were extended to October 1, 1941, and the coupons appertaining to said Debentures of both issues commencing with the coupons which became due on July 1, 1931, down to and including July 1, 1937, were exchanged for scrip issued by Pioche Consolidated, which operated to extend the instalments of interest represented by said coupons to October 1, 1941, the extended date of maturity of both sets of Debentures. When the Debentures were declared due and payable by Fidelity the scrip, according to its terms, became due and payable at the same time. The coupons exchanged for scrip were held alive for the protection of the scrip, as provided for in the scrip certificate, and the coupons so surrendered in exchange are now held by Fidelity, together with a very large majority of the outstanding Debentures and the scrip apper-

taining thereto, under the Debenture-holders' Agreement dated as of February 1, 1939 (Exhibit "J" hereto).

Fidelity alleges that the sum of $100,000. is a reasonable amount to be allowed to cover compensation, costs and expenses of Fidelity and of Debenture-holders' Committee appointed by Debenture-holders' Agreement dated as of February 1, 1939 (Exhibit "J" hereto) including attorneys' fees, as well as any and all liabilities incurred by Fidelity as Trustee under the Trust Agreement dated January 2, 1929 (Exhibit "A" hereto) and Supplemental Agreements thereto, and the Trust Agreement dated October 1, 1930 (Exhibit "D" hereto) and Supplemental Agreements thereto.

Wherefore, Fidelity claims there is justly due and owing by Pioche Consolidated, Inc. to it the following sums:

PRINCIPAL:		
Debentures of '29	$476,300.	
Debentures of '30	211,000.	
Total		$ 687,300.00
INTEREST:		
Interest on Debentures of '29 payable on January 1 and July 1 in each year at the rate of seven per cent per annum, each instalment amounting to $16,670.50, the total amount due for the unpaid instalments commencing with the instalment due July 1, 1931 and continuing down to and including the instalment due January 1, 1940, amounts to		300,069.00

Interest on Debentures of '30 payable on April 1 and October 1 in each year at the rate of seven per cent per annum, each instalment amounting to $7,385., the total amount due for the unpaid instalments commencing with the instalment due October 1, 1931 and continuing down to and including the instalment due October 1, 1939 (not including the instalment due October 1, 1937 which was paid in cash) amounts to	118,160.00
Interest on Debentures of '30—October 1, 1939 to January 1, 1940	3,692.50
Interest on overdue instalments of interest calculated down to January 1, 1940	125,457.03
Allowance to cover the compensation, costs and expenses of Fidelity, and the costs and expenses of Debenture-holders' Committee, including attorneys' fees, as well as any and all liabilities incurred by Fidelity, as Trustee under the said two Trust Agreements and the Supplemental Agreements thereto....	100,000.00
Total amount due and owing to Fidelity as of January 1, 1940	$1,334,678.53

In addition to the total amount above set forth, Fidelity will be entitled to receive from Pioche Mines Consolidated, Inc., additional interest on the principal amount of Debentures and on overdue instalments of interest down to the date of judgment.

* * * * *

XVII.

Stockholders' Claims

* * * * *

Stockholders, on behalf of themselves and all other stockholders, assert the following claims in a secondary capacity (more particularly defined in paragraph II of this Complaint) on behalf of Pioche Consolidated.

(a) that Mines Company pay to Pioche Consolidated the sum of $380,826.94, plus interest at the rate of 7% per annum from December 26, 1928, to

date of payment and any and all other sums that shall be found to be due to it by Mines Company.

* * * * *

Wherefore, plaintiffs pray:

I.

That this Court appoint a suitable and competent person or persons as receiver or receivers of the defendants, Pioche Consolidated and Mines Company, and of their properties and assets, wherever found or situate, and that the Court, by its said receiver or receivers, take possession of all of said properties and assets, tangible and intangible, and that said receiver or receivers hold and administer all of said properties and assets under the orders and directions of this Court, for the benefit of the creditors of the said defendants and of their stockholders, in accordance with their respective rights and priorities, and that said receiver or receivers be authorized to carry on the business of the said defendants to such an extent as shall be necessary to secure adequate protection of all parties and as the Court may from time to time order during the pendency of this suit.

II.

That the respective claims of creditors and the respective liens and priorities thereof, if any exist, be ascertained, and that this Court enforce the rights, claims, liens and equities of all of the creditors of the said defendants as the same may be finally ascertained by this Court.

III.

That said receiver or receivers be given power to collect the assets of the said defendants, Pioche Consolidated and Mines Company, and to protect and

preserve the same for such length of time as the Court may order, so that the said assets will not be sacrificed; that said receiver or receivers be authorized to take possession of all shares of stock of subsidiary companies of the said defendants and to take such steps in connection therewith as may be necessary and proper for the conservation and administration and preservation of the assets of such subsidiaries.

IV.

That temporarily and pending this suit and until further order of this Court, the said defendants, Pioche Consolidated and Mines Company, their agents, servants and employees, officers and directors, and all persons claiming to act by, through or under the said defendants and all other persons, be restrained from interfering with the taking of possession or the possession of the property and assets of the said defendants in the hands of the receiver or receivers and the acts of the receiver or receivers.

V.

That said defendants, Pioche Consolidated and Mines Company, and John Janney be ordered to assign, transfer and set over to the receiver or receivers appointed by this Court all Pioche Consolidated and Mines Company properties and assets of every kind and nature, including all shares of stock of subsidiaries of the said defendant.

VI.

That this Court enter its order directing that shares of stock of Mines Company be issued in the name of Pioche Consolidated in such amount as shall

be shown to be due and that certificates representing said stock be delivered to said receiver, or to Pioche Consolidated, as this Court shall determine.

VII.

That this Court enter its order directing John Janney to dissolve the so-called Volcano Trust and requiring him to transfer the shares of stock of Nevada-Volcano Mines Company held in said Trust into the name of Pioche Consolidated, and to deliver certificates representing such shares to the receiver, or to Pioche Consolidated, as this Court shall determine.

VIII.

That this Court shall enter its order directing John Janney to convey the mill site to Pioche Consolidated.

IX.

That this Court enter its decree setting aside as fraudulent the conveyance by Mines Company by deed dated August 8, 1938, of Lots 14, 15, 16 and 17, Block 1 of Lots and Block Delineated on the Official Map of the Town of Pioche, to John Janney.

X.

That this Court set aside as an attempt to give illegal preference to creditors, the resolution adopted December 3, 1938 by the Board of Directors of Pioche Consolidated, waiving, postponing and extending the claims (including particularly the $380,-826.94 claim) of Pioche Consolidated against Mines Company.

XI.

That Fidelity-Philadelphia Trust Company have judgment against Pioche Consolidated for the

amount of its claim, as set forth in Paragraph XIV above, together with interest on such sum from January 1, 1940, to date of payment.

XII.

That Pioche Consolidated have judgment against Mines Company for the amount of $380,826.94, plus interest from December 26, 1928, at the rate of 7% per annum, and such other amounts as shall be found to be due.

XIII.

That plaintiffs, and each of them, have such other and further relief in the premises as may be just and proper and as circumstances of the case may in equity require.

/s/ THATCHER & WOODBURN,
/s/ GEO. B. THATCHER,
/s/ CLARK, HEBARD & SPAHR,
/s/ PERCY H. CLARK

Duly Verified.

EXHIBIT "A"

This Agreement, made as of the second day of January, 1929, between Pioche Mines Consolidated, Inc., a corporation organized and existing under the laws of the State of Nevada (hereinafter called the "Company"), party of the first part, and Fidelity-Philadelphia Trust Company, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called "Trustee"), party of the second part.

Whereas, the Company has deemed it necessary

Exhibit "A"—(Continued)

to borrow money for its corporate purposes and to that end has duly determined to issue its Debenture Bonds, not exceeding the aggregate principal amount of Five Hundred Thousand Dollars, to be designated as its "Five Year Seven Per Cent. Convertible Debentures" (hereinafter referred to as "Bonds"), to be dated as of January 2, 1929, to mature January 1, 1934, to bear interest from January 1, 1929, at the rate of seven per cent. (7%) per annum, payable semi-annually on January 1 and July 1 in each year, both principal and interest to be payable at the office of Fidelity-Philadelphia Trust Company, in the City of Philadelphia, Pennsylvania, and all the Bonds to be signed in the name of the Company by its President or a Vice-President, to be impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, and to be authenticated by the certificate of the Trustee endorsed thereon, and to have interest coupons attached, executed with the facsimile signature of its Treasurer, and to be issued pursuant to terms and conditions set forth in this Trust Agreement, which Bonds, interest coupons and Trustee's certificate are to be substantially in the following forms, respectively:

No. (Form of Bond) $

United States of America
State of Nevada

Pioche Mines Consolidated Inc.

Five Year Seven Per Cent. Convertible Debenture

Pioche Mines Consolidated, Inc., a corporation of

Exhibit "A"—(Continued)

the State of Nevada (hereinafter called the "Company"), For Value Received, promises to pay to Bearer (or, if this Debenture be registered, to the registered owner hereof), the principal sum of..... Dollars on January 1, 1934, and to pay interest thereon from January 1, 1929, at the rate of seven per cent. per annum, semi-annually on January 1 and July 1 of each year. Any such interest falling due at or before the maturity of this Debenture shall be paid only upon presentation and surrender of the attached interest coupons as they severally mature.

Both principal and interest of this Debenture are payable at the office of the Trustee hereinafter named, in the City of Philadelphia, Pennsylvania, in gold coin of the United States of America of or equal to the standard of weight and fineness existing January 1, 1929, without deduction for any Federal income tax on or in respect to such interest, which the Company or its paying agents may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law of the United States of America, up to but not in excess of, 2 per cent. of such interest.

This is one of an issue of Debentures of the Company, all of like date and similar tenor, except as to the denomination thereof, not exceeding the aggregate principal amount of $500,000., all issued pursuant to a certain Trust Agreement, dated as of January 2, 1929, executed between the Company and Fidelity-Philadelphia Trust Company, of Philadel-

Exhibit "A"—(Continued)

phia, as Trustee, to which Trust Agreement reference is hereby made for the terms thereof. To the extent provided in the said Trust Agreement, all rights of action upon this Debenture prior to January 1, 1934, are vested in the Trustee.

In the manner provided in the said Trust Agreement, this Debenture may be redeemed, at the option of the Company, on any interest date, upon thirty days' prior notice, at a redemption price equivalent to one hundred and five per cent. (105%) of the principal amount hereof and accrued interest to the date of redemption.

This Debenture shall pass by delivery until registered in the owner's name at the office of the Trustee, such registration being noted hereon. After such registration no further transfer hereof shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney and similarly noted hereon; but this Debenture may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. This Debenture shall continue to be subject to successive registrations and transfers to bearer, at the option of the owner; but no registration shall affect the negotiability of the attached interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

In the manner and with the effect provided in the said Trust Agreement, the principal of all the

Exhibit "A"—(Continued)

said Debentures at any time issued and outstanding may be declared, or may become, due and payable before maturity upon the happening of one or more of the events described in the said Trust Agreement.

The Debentures of this series shall be convertible at the option of the holders at any time prior to maturity into the Common Stock (as constituted on January 1, 1929) of the Company in the manner prescribed in the said Trust Agreement, upon giving twenty days' notice as therein provided, at the rate for each One Hundred Dollars ($100.) face value of Debentures, with all unmatured coupons attached of 40 shares of stock to and including January 1, 1931, of 35 shares of stock from January 2, 1931, to and including January 1, 1933, and of 30 shares of stock from January 2, 1933, to and including January 1, 1934, the date of maturity. At the time of such conversion any difference between the accrued interests on the Debentures and the accruing dividends on the stock, if a cash dividend has been declared within six months prior to such conversion, shall be adjusted in cash, said dividends to be computed at the rate per annum of said last previous cash dividend; but if no cash dividend has been paid within said period of six months, the conversion shall be made at the above rate for Debentures and stock without any allowance for interest or dividends. In case this Debenture is called for redemption, the holder hereof may still exercise his right of con-

Exhibit "A"—(Continued)

version, provided he gives the required notice at least twenty days prior to the date fixed for redemption.

No recourse shall be had for the payment of any part of either principal or interest of this Debenture, or for any claim based hereon or thereon, or otherwise in any manner in respect hereof or in respect of the said Trust Agreement, or of the indebtedness represented hereby, to or against any incorporator, stockholder, officer or director, past, present or future, of the Company or of any predecessor, or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any statute or constitutional provision or rule of law, or by the enforcement of any assessment or penalty or otherwise, or in any manner; all such liability, by the acceptance hereof, and as part of the consideration for the issue hereof, being expressly released, as provided in the said Trust Agreement.

This Debenture shall not be valid or obligatory for any purpose until authenticated by the execution by the Trustee of the certificate endorsed hereon.

In Witness Whereof, the Company has caused this Debenture to be signed in its corporate name by its President or a Vice-President and impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, and the attached interest

Exhibit "A"—(Continued)

coupons to be executed with the facsimile signature of its Treasurer, as of January 2, 1929.

PIOCHE MINES CONSOLIDATED, INC.,

By .....
President.

Attest:

.....
Secretary

No. (Form of Interest Coupon) $

On the first day of , 19 , unless the Debenture herein mentioned shall have been called for redemption on or prior to such date, Pioche Mines Consolidated, Inc., will pay to Bearer at the office of Fidelity-Philadelphia Trust Company, in the City of Philadelphia and State of Pennsylvania,
Dollars in United States gold coin, without deduction for any Federal income tax thereon or in respect thereto, up to, but not in excess of 2 per cent. of the said sum, being six months' interest then due on its Five Year Seven Per Cent. Convertible Debenture No.

.....
Treasurer.

Exhibit "A"—(Continued)
(Form of Trustee's Certificate)

This is one of the Debentures described in the within-mentioned Trust Agreement.

FIDELITY-PHILADELPHIA TRUST COMPANY, Trustee

By .....
Vice-President.

And Whereas, all things necessary to make the Bonds, when duly authenticated by the Trustee, the valid, binding and legal obligations of the Company, and the execution and delivery of this Agreement and the issue of the Bonds, as in this Agreement provided, have been in all respects duly authorized;

Now, Therefore, This Agreement Witnesseth: That in consideration of the premises and of the purchase or acceptance of the Bonds by those who shall hold the same from time to time, and of the sum of One Dollar by each of the parties hereto to the other duly paid, the receipt whereof is hereby acknowledged, The Parties Hereto Hereby Covenant and Agree, for the equal benefit, security and protection of the legal holders of the Bonds and the interest coupons pertaining thereto, without preference of any of the Bonds or interest coupons over any of the others by reason of priority in the time of issue, sale or negotiation thereof, or otherwise for any cause whatever, except as otherwise provided in Section 8 hereof, as follows:

Exhibit "A"—(Continued)

Article First
Designation, Form, Issue, Authentication and Registration of Bonds

Section 1. The Bonds to be issued under this Agreement shall be designated as the Company's "Five Year Seven Per Cent. Convertible Debentures," and they and the interest coupons attached thereto shall be substantially in the forms and of the tenor hereinbefore recited, respectively.

Section 2. The Company shall execute in the manner hereinbefore recited and deliver to the Trustee from time to time not to exceed Five Hundred Thousand Dollars, aggregate principal amount, of Bonds in the denominations of $100, $500 and $1000, in such amounts as to each denomination as the Company may determine; and the Trustee shall authenticate the same and deliver the Bonds so authenticated to or upon the written order of the Company, signed by its President or a Vice President. Except as herein otherwise expressly provided with respect to the exchange or substitution of Bonds on certain contingencies, no further Bonds shall at any time be issued under this Agreement.

Only such Bonds as shall be authenticated by a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to any right or benefit under this Agreement; and such authentication by the Trustee shall be conclusive evidence, and the only competent evidence, that any

Exhibit "A"—(Continued)

outstanding Bond so authenticated has been duly issued hereunder and that the holder is entitled to the benefits hereof.

Section 3. The owner of any definitive Bond may have the ownership thereof registered at the office of the Trustee in the City of Philadelphia and State of Pennsylvania, such registration, being noted on the Bond. After such registration, no further transfer of such Bond shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney and similarly noted on the Bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. Bonds shall continue to be subject to successive registrations and transfers to bearer, at the option of their respective owners; but no registration of any Bond shall affect the negotiability of the interest coupons pertaining thereto, which shall continue to be payable to bearer and transferable by delivery merely.

Section 4. In case any Bond issued hereunder shall be mutilated, or destroyed, the Company, in its discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new Bond of like denomination, tenor and date, in exchange and substitution for and upon the cancellation of the mutilated Bond and its interest coupons, or in lieu of and in substitution for the Bond and its interest coupons so destroyed, upon receipt of evidence satis-

Exhibit "A"—(Continued)

factory to the Company and the Trustee of the destruction of such Bond and its interest coupons, and upon the receipt, also, of indemnity, satisfactory to them; provided, that the Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge connected with such issue, and also a further sum, not exceeding two dollars, for each Bond so issued in substitution.

Section 5. The owner of any One Hundred Dollar ($100), and/or Five Hundred Dollar ($500) Bonds of this issue may at any time surrender the same in lots of One Thousand Dollars ($1,000) each in principal amount (accompanied, if registered, by a written instrument of transfer, duly executed) with all unmatured coupons thereto belonging, to the Trustee for cancellation and exchange and thereupon the Company shall issue and the Trustee shall authenticate and deliver to such owner a Bond or Bonds of the denomination of One Thousand Dollars ($1,000) each and representing an equivalent obligation for principal and interest. There shall always be reserved uncertified a sufficient number of One Thousand Dollar ($1,000) Bonds to represent all One Hundred Dollar ($100) and Five Hundred Dollar ($500) Bonds at any time outstanding, and each One Thousand Dollars ($1,000) Bond thus issued in exchange for One Hundred ($100) and Five Hundred Dollar ($500) Bonds shall bear the lowest number reserved for that purpose.

Exhibit "A"—(Continued)

Article Second

Covenants of the Company

The Company covenants with the Trustee and the holders of the Bonds as follows:

Section 6. The Company will duly and punctually pay or cause to be paid the principal and interest of all the Bonds duly issued hereunder according to the terms thereof and of this Agreement, without deduction for any Federal income tax on or in respect to such interest, which the Company or its paying agents may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law of the United States of America, up to, but not in excess of, 2 per cent. of such interest.

Section 7. So long as any of the Bonds remain outstanding and unpaid, the Company will at all times keep an agency in the City of Philadelphia and State of Pennsylvania, where notices and demands in respect of such Bonds and of this Agreement may be served, and will, from time to time, give notice to the Trustee of the location of such agency; and, in case the Company shall fail so to do, notices may be served and demands may be made at the office of the Trustee in the City of Philadelphia and State of Pennsylvania. The Company will at all times keep or cause to be kept at the said office of the Trustee books in which the ownership of any Bonds may be registered, upon the presentation

Exhibit "A"—(Continued)

thereof for such purpose, as provided in Section 3 hereof.

Section 8. So long as any of the Bonds remain outstanding and upaid, the Company will not directly or indirectly extend or assent to the extension of the time for the payment of any interest coupon or claim for interest of or upon any Bond, and it will not directly or indirectly be a party to any arrangement therefor, either by purchasing or refunding or in any manner keeping alive such interest coupon or claim for interest, or otherwise. In case the payment of any such interest coupon or claim for interest shall be so extended by or with or without the consent of the Company, then, anything in this Agreement contained to the contrary notwithstanding, such interest coupon or claim for interest so extended shall not be entitled, in case of default hereunder, to any benefit of or from this Agreement, except after the prior payment in full of the principal of all the Bonds issued hereunder and of all such interest coupons and claims for interest as shall not have been so extended.

Section 9. So long as any of the Bonds remain outstanding and unpaid, the Company will not execute any mortgage upon, or make any pledge of, or create any lien (legal or equitable) on, any of its properties (real or personal) or on the properties of any subsidiary company, as security for any bond or bonds or funded obligations of any character, but the Company may acquire additional properties under and subject to existing mortgages.

Exhibit "A"—(Continued)

Article Third

Redemption of Bonds

Section 10. The Company at its option may redeem the Bonds outstanding hereunder on any interest date either as a whole or in part from time to time by paying therefor the par value thereof and a premium of five per cent. (5%) and all accrued interest thereon. In case the Company shall desire so to redeem less than all the Bonds outstanding on the date on which it desires to make redemption, the Company shall notify the Trustee in writing of the aggregate principal amount of the Bonds which it desires to redeem, specifying the date (which shall not be less than forty days after such notification) on which it desires to make redemption. As soon as practicable thereafter (and, in any event, within ten days) the Trustee shall determine, by lot, in any manner deemed by the Trustee to be fair, the particular serial numbers of the Bonds to be redeemed and shall certify to the Company the Serial numbers of the Bonds so determined. The Company shall thereupon cause notice of redemption to be published in one daily newspaper of general circulation published in the City of Philadelphia, State of Pennsylvania, once a week for four successive weeks, the first publication to be not less than thirty days prior to the date of such redemption, notice of such intended redemption, specifying the date of redemption, the serial numbers of the Bonds to be redeemed

Exhibit "A"—(Continued)

and requiring that the same be then surrendered at the office of the Trustee in the City of Philadelphia, State of Pennsylvania, for redemption at the said redemption price, and giving notice, also, that the interest on the Bonds so called for redemption shall cease on the designated redemption date. At least thirty days prior to the redemption date, a similar notice shall also be mailed by the Trustee, postage prepaid, to the respective registered owners of any Bonds called for redemption, at their addresses appearing on the registry books. The Company, on or before the redemption date designated in such notice, shall deposit with the Trustee an amount in cash sufficient to redeem all the Bonds designated in the notice.

In case the Company shall desire to redeem all of the Bonds outstanding on the date on which it desires to make redemption, it shall give notice thereof in like manner by publication and mailing, except that the notice need not specify the serial numbers of the Bonds to be redeemed.

Section 11. Notice of redemption having been given by publication and mailing, as provided in Section 10 hereof, the Bonds so called shall, on the date designated in such notice, become due and payable at the office of the Trustee, and, upon presentation and surrender thereof, with all interest coupons maturing on or subsequently to the redemption date, and, in the case of Bonds which shall at any time be registered, accompanied by duly executed assignments or transfer powers, such Bonds shall be paid

Exhibit "A"—(Continued)

and redeemed at the said redemption price out of the funds so deposited with the Trustee. After the date so fixed for redemption (unless the Company shall make default in providing for the payment thereof), the Bonds so called shall cease to bear further interest and thereafter said bonds shall not be entitled to any benefit of or from this agreement, but shall be entitled solely to payment out of said moneys held for their redemption by the trustee.

Section 12. All Bonds purchased or redeemed pursuant to any of the provisions of this Article Third shall forthwith be cancelled by the Trustee and delivered to or upon the written order of the Company. All expenses of any character shall be borne and paid by the Company.

Article Fourth
Conversion of Bonds

Section 13. The Bonds to be authenticated and issued under the provisions of this Trust Agreement shall be convertible, at the option of the holders, at any time prior to maturity, into the Common Stock (as constituted on January 1, 1929) of the Company, at the rate for each One Hundred Dollars ($100) face value of Bonds, with all unmatured coupons attached of 40 shares of Stock to and including January 1, 1931, of 35 shares of Stock from January 2, 1931, to and including January 1, 1933, and of 30 shares of Stock from January 2, 1933, to and including January 1, 1934, the date of ma-

Exhibit "A"—(Continued)

turity. At the time of such conversion any difference between the accrued interest on the Bonds and the accruing dividends on the Stock, if a cash dividend has been declared within six months prior to such conversion, shall be adjusted in cash, said dividends to be computed at the rate per annum of said last previous cash dividend; but if no cash dividend has been paid within said period of six months, the conversion shall be made at the above rate for Bonds and stock without any allowance for interest or dividends. In case any Bond is called for redemption, the holder thereof may still exercise his right of conversion, provided he gives written notice at least twenty days prior to the date fixed for redemption as hereinafter set forth.

Any holder of any such Bond wishing to exercise his right of conversion must, at least twenty days prior to the time when the conversion is to take place, give written notice to the Company addressed and delivered to it either at the office of the Trustee in the City of Philadelphia, State of Pennsylvania, or at the office of the Company in the Town of Pioche, State of Nevada, setting forth the intention of the bondholder to convert his Bonds, the amount of Bonds to be converted, the serial numbers thereof and the name or names in which the Stock to be issued in exchange therefor shall be issued, and must also at the time of giving such notice surrender to the Company at one or the other of said offices the Bonds to be converted, in negotiable form, with all unmatured coupons attached thereto, and the Com-

Exhibit "A"—(Continued)

pany will in due course deliver to the bondholder at the office where the bonds were surrendered certificates, registered in the name indicated, for the Stock issuable in exchange for the Bonds surrendered. The Company will deliver all Bonds so surrendered to it to the Trustee and the Trustee will cancel all such Bonds, and also all Bonds surrendered at its office for conversion and deliver the same to the Company or upon the written order of the Company.

The Company will pay the amount of any and all United States Internal Revenue stamp taxes and any and all stock original issue or transfer stamp taxes of the State of Nevada which may be payable in respect to the issue and delivery of any stock or stock certificates, in pursuance of any of the provisions of this Section, and it will provide such stamps therefor as may be required by law. All shares of stock issued upon any conversion shall be full paid and non-assessable.

If at the time of the conversion of the principal of any Bond or Bonds into the stock of the Company, as provided in this Section, a cash adjustment is to be made between the Company and the holder of the Bond or Bonds so surrendered in respect to the accrued interest thereon and the current dividends on the shares of stock represented by the certificates delivered on such conversion, such adjustment shall be made on such basis approved by the Trustee as equitable and under such proper regulations and provisions not inconsistent herewith as the Board

Exhibit "A"—(Continued)

of Directors of the Company shall from time to time prescribe.

In case the Company and the Trustee shall be unable to agree upon a basis of adjustment which the Trustee considers equitable, then the Trustee may in its discretion fix such basis and the determination of the Trustee in that regard shall be final and conclusive upon the Company and all the holders of Bonds.

Nothing contained in this Trust Agreement, or in any of the Bonds, shall be construed to confer upon the holder of any Bond, as such, any of the rights of a stockholder in the Company before he shall have actually become such stockholder by converting the principal of such Bond into the stock of the Company, as herein provided; and no holder of any Bond, as such, shall have any right to participate in or question the issue by the Company, for cash or property, of any additional or increased capital stock of the Company of any class, or securities of the Company of any kind.

Article Fifth

Remedies in Case of Default

Section 14. In case any one or more of the following events (hereinafter called "defaults") shall happen:

(a) Default in the payment of any instalment of interest on any of the Bonds, which default shall continue for a period of thirty days;

Exhibit "A"—(Continued)

(b) Default in the performance, or a violation, of any other covenant, condition or agreement on the part of the Company in any of the Bonds or in this Agreement contained, which default shall continue for a period of thirty days after written notice thereof shall have been given to the Company by the Trustee, which may, in its discretion, give such notice, and shall do so upon the written request of the holders of 50 per cent. in aggregate principal amount of the Bonds then outstanding; or

(c) By decree of a court of competent jurisdiction, the Company shall be adjudicated a bankrupt, or by order of any such court a receiver of the property of the Company shall be appointed and such order shall have been continued in effect for a period of thirty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of creditors;

then, in any such case, the Trustee, by written notice to the Company, may, and shall, upon the written request of the holders of 50 per cent. in aggregate principal amount of the Bonds then outstanding, declare the principal of all the Bonds then outstanding to be due and payable immediately; and, upon such declaration, the same shall become immediately due and payable, anything in this Agreement or in any of the Bonds contained to the contrary notwithstanding; provided, that if, at any time either before or after the principal of the Bonds shall have been so declared due and payable, and

Exhibit "A"—(Continued)

before any judgment shall have been obtained by the Trustee against the Company, all arrears of interest upon all the Bonds, with interest on overdue instalments of interest at the rate of 7 per cent. per annum, together with the reasonable charges and expenses of the Trustee, its agents, attorneys and counsel, shall have been paid by the Company and any and every other default by reason of the happening of which the principal of any of the Bonds may have been, or might be, declared due hereunder shall have been remedied and made good, then, in each such case, the holders of a majority in aggregate principal amount of the Bonds then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences and rescind any such declaration; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 15. If default be made by the Company in the payment of the principal or interest of any of the Bonds, whether the same shall become due by declaration or otherwise, then, in each such case, upon demand of the Trustee, the Company agrees to pay to the Trustee for the benefit of the holders of the Bonds and interest coupons then outstanding, the whole amount then due and payable on all such outstanding Bonds and interest coupons, with interest upon overdue instalments of interest at the rate of 7 per cent. per annum, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a rea-

Exhibit "A"—(Continued)

sonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder; and in case the Company shall fail to pay the same forthwith upon demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Company for the whole amount thereof and to issue execution therefor against the whole or any part of the property of the Company, real or personal.

Any moneys collected by the Trustee under this Section 15 shall be applied by the Trustee, subject to the provisions of Section 8 hereof, as follows:

First: To the payment of the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and to the payment of all prior unpaid charges and expenses of the Trustee or its counsel, and all expenses and liabilities incurred or advanced, or disbursements made, by the Trustee;

Second: To the payment of the whole amount then due and unpaid either for principal or interest, or for both principal and interest, upon the Bonds, with interest on overdue instalments of interest at the rate of seven per cent. per annum; and, in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference or priority of principal over interest, or of interest

Exhibit "A"—(Continued)

over principal, or of any instalment of interest over any other instalment of interest;

Third: To the payment of the remainder (if any) to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 16. All remedies conferred by this Agreement shall be deemed cumulative and not exclusive, and shall not be so construed as to deprive the Trustee of any legal or equitable remedy by judicial proceedings appropriate to enforce the conditions, covenants and agreements of this Agreement or to enjoin the violation thereof.

No delay or omission by the Trustee, or by any holder of any Bond, to exercise any right or power arising from any default hereunder shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee, or to the holders of the Bonds, may be exercised, from time to time, and as often as may be deemed expedient.

Section 17. In case the Trustee shall have proceeded to enforce any remedy or power under this Agreement, and such proceedings shall have been discontinued or abandoned, because of waiver, or for any other reason, or shall have been determined adversely, then, in each and every such case, the Company and the Trustee and the respective holders of the Bonds shall be severally and respectively restored to their former positions and rights here-

Exhibit "A"—(Continued)

under; and all rights, remedies and powers of the Trustee and of the respective holders of the Bonds shall continue as though no such proceedings had been taken. No waiver of any default or its consequences, under any of the provisions of this Article Fifth shall extend to or affect any subsequent default, or impair any right consequent thereon.

Section 18. Prior to January 1, 1934, no holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding, at law or in equity, for the collection of any sum due from the Company on such Bond, for principal or interest, or upon or in respect of this Agreement, or for the execution of any trust or power hereof, or for any other remedy or right under or upon this Agreement, unless such holder shall previously have given to the Trustee written notice of an existing default, and unless, also, such holder or holders shall have tendered to the Trustee security and indemnity satisfactory to it against all costs, expenses and liabilities which might be incurred in or by reason of such action, suit or proceeding, and unless, also, the holders of fifty per cent. in aggregate principal amount of the Bonds then outstanding shall have requested the Trustee in writing to take action in respect of such default and the Trustee shall have declined or failed to take such action within thirty days thereafter; it being intended that no one or more holders of Bonds shall have any right in any manner to enforce any right hereunder, or under or in respect of any of the Bonds, except in the manner herein provided,

Exhibit "A"—(Continued)

and for the equal proportionate benefit of all holders of outstanding Bonds; provided, that nothing contained in this Section 18 or elsewhere in this Agreement, or in any Bond, shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of the Bonds to the respective holders thereof, at the time and place expressed in the Bonds, or to pay the redemption price thereof to the respective holders of any Bonds which may be called for redemption, on the date designated therefor, or affect or impair the right of action, which is also absolute and unconditional, of such holders to enforce and collect such payment by appropriate action, suit or proceeding.

Article Sixth

Miscellaneous Provisions

Section 19. Any demand, request or other instrument required or provided by this Agreement to be signed or executed by the holders of any Bonds may be in any number of concurrent writings of similar tenor, and may be signed or executed by such holders in person, or by attorney appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such attorney, and of the ownership by any person of any Bonds, shall be conclusive in favor of the Trustee and of the Company, with regard to due action taken by the Trustee or by the Company pursuant to such instrument, if such proof be made in the following manner:

Exhibit "A"—(Continued)

The fact and date of the execution by any person of any such demand, request or other instrument may be proved by the certificate of any notary public or any officer of any jurisdiction authorized by the laws thereof to take acknowledgments of deeds to be recorded in any state within the United States of America, certifying that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution, duly sworn to before any such notary public or other officer.

The fact of the ownership of any Bonds which shall not at the time be registered and the amounts and serial numbers of such Bonds and the date of holding the same, may be proved by a certificate executed by any trust company, bank, banker or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned the person named in such certificate had on deposit with such depositary the Bonds described in such certificate; but the Trustee, in its discretion, may require such other and further proof of such ownership as, being advised by counsel, it shall deem advisable. For all purposes of this Agreement and of any proceeding pursuant hereto for the enforcement hereof or otherwise, such person shall be deemed to continue to be the owner of such Bonds until the Trustee shall have received notice in writing to the contrary. The ownership of any Bonds which shall at the time be registered shall be proved by the register thereof.

Exhibit "A"—(Continued)

Section 20. As to all Bonds which shall at the time be registered, the person in whose name the same shall be registered on the books of the Company shall for all purposes of this Agreement be deemed and regarded as the owner thereof, and payment of or on account of the principal of any such Bond so registered shall be made only to or upon the order of such registered holder. Such payment shall be valid and effectual to satisfy and discharge the liability of the Company upon such Bonds to the extent of the sum or sums so paid.

The holder of any Bond which shall not at the time be registered, and the holder of any interest coupon pertaining to any Bond, whether such Bond be registered or not, shall for all purposes of this Agreement be treated as the absolute owner of such Bond or interest coupon; and neither the Company nor the Trustee shall be affected by any notice to the contrary.

Section 21. No recourse shall be had for the payment of any part of either principal or interest of any Bond or for any claim based thereon or otherwise in any manner in respect thereof or in respect of this Agreement, to or against any incorporator, stockholder, officer or director, past, present or future, of the Company, or of any predecessor or successor company, or to or against the legal representatives or assigns of any such incorporator, stockholder, officer or director, either directly or through the Company, or any such predecessor or successor

Exhibit "A"—(Continued)

Company, whether by virtue of any statute or constitutional provision or rule of law, or by the enforcement of any assessment or penalty, or otherwise, or in any manner.

Section 22. All the covenants, stipulations and agreements in this Agreement contained by or on behalf of the Company, are and shall be for the sole and exclusive benefit of the parties hereto and of the respective holders of the Bonds and interest coupons issued hereunder. Whenever, in this Agreement, any of the parties hereto is referred to, such reference shall be deemed to include the successor or successors and assigns of such party; and all covenants, promises and agreements in this Agreement contained by or on behalf of the Company, or by or on behalf of the Trustee, shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

Article Seventh

Concerning the Trustee

Section 23. The Trustee accepts the trusts of this Agreement and agrees to execute the same upon the terms and conditions hereof, including the following, to all of which the Company and the holders of the Bonds agree:

The Trustee shall be under no obligation to see to the performance or observance of any of the covenants or agreements on the part of the Company.

Exhibit "A"—(Continued)

The Trustee shall not be accountable in respect of the validity of this Agreement or of the Bonds; and it makes no representation in respect thereof.

The Trustee shall not be responsible for the recitals herein or in the Bonds contained, all of which are made by the Company, solely.

The Trustee shall be entitled to reasonable compensation for all services rendered hereunder, and such compensation, and that of its counsel and of such persons as it may employ in the administration of the trusts hereby created, as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Company agrees to pay.

Until the Trustee shall have received written notice to the contrary from the holders of not less than fifty per cent. in aggregate principal amount of the Bonds at the time outstanding, the Trustee may, for all the purposes of this Agreement, assume that no default has been made in the payment of any of the Bonds or of the interest thereon, or in the observance or performance of any other of the covenants contained in the Bonds or in this Agreement, and that the Company is not in default under this Agreement.

The Trustee shall not be under any obligation to take any action hereunder, which in its opinion will be likely to involve it in expense or liability, unless one or more holders of Bonds shall, as often as required by the Trustee, furnish it security and indemnity satisfactory to it against such expense and liability; nor shall the Trustee be required to take

Exhibit "A"—(Continued)

any action in respect of any default hereunder unless requested by an instrument in writing signed by the holders of not less than fifty per cent. in aggregate principal amount of the Bonds then outstanding.

Any action taken by the Trustee at the request or with the consent of any person who at the time is the owner of any Bond shall be conclusive and binding upon all future holders of such Bond.

The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for any error of judgment, nor for any act done or omitted by it in good faith, nor for any mistake of fact or of law, nor for anything whatever in connection with this Agreement, except for its own wilful misconduct.

The Trustee may advise with legal counsel, who may be counsel for the Company; and any action under this Agreement, taken or suffered in good faith by the Trustee in accordance with the opinion of counsel, shall be conclusive on the Company and on all holders of Bonds, and the Trustee shall be fully protected in respect thereto.

The Trustee shall be protected in acting upon any notice, request, waiver, consent, certificate, affidavit, indemnity bond or other instrument believed by it to be genuine and to be signed by the proper party or parties.

The Trustee, in its individual capacity, or otherwise, may acquire and hold any Bonds issued here-

Exhibit "A"—(Continued)

under with the same right and to the same extent as if it were not such Trustee.

All moneys coming into the hands of the Trustee may be treated by it, until such time as it is required to pay out the same, as a general deposit, and the interest (if any) paid thereon shall be at such rate as the Trustee allows on similar deposits.

All rights of action under this Agreement may be enforced by the Trustee without the possession of any Bonds or the production thereof on the trial or other proceedings relative thereto.

Section 24. The Trustee or any successor may resign as Trustee hereunder by filing with the Company an instrument in writing, resigning the trusts hereby created, two weeks (or such shorter time as may be accepted by the Company as adequate) before such resignation shall take effect.

Any Trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee for the time being acting hereunder and executed by the holders of two-thirds in aggregate principal amount of the Bonds then outstanding; provided, there be paid to the Trustee so removed all moneys due to it hereunder.

Section 25. In case, at any time, any Trustee acting hereunder shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in aggregate principal amount of the Bonds then outstanding by an instrument signed by such holders or their attorneys in fact duly authorized, and de-

Exhibit "A"—(Continued)

livered to such successor; but until a new trustee shall be so appointed hereunder, the Company may, by an instrument in writing, executed by order of its Board of Directors, appoint a Trustee to fill such vacancy. Any new Trustee so appointed by the Company shall immediately be superseded by a Trustee appointed in the manner above provided by the holders of a majority in aggregate principal amount of the outstanding Bonds.

Any Trustee appointed under any of the provisions of this Article Seventh shall always be a national banking association or other bank or trust company having an office in the City of Philadelphia, and having a capital and surplus aggregating at least One Million Dollars, if there shall be such a banking association, bank or trust company willing and able to accept the trusts upon reasonable or customary terms.

Section 26. Any successor Trustee appointed hereunder shall execute and deliver to the Company and to the retiring Trustee an instrument accepting such appointment hereunder, and thereupon such successor Trustee shall be invested with the same authority, rights, powers, duties and discretion herein provided for the Trustee; but the Trustee so resigning or removed, shall, at the request of the Company, or of the successor Trustee so appointed, and upon payment of its charges and disbursements then unpaid, make and execute such deeds, conveyances, assignments or assurances to its successor as its successor may reasonably require, and shall de-

Exhibit "A"—(Continued)

liver to such successor all cash then in its possession hereunder.

In Witness Whereof, the Company and the Trustee have caused this Agreement to be signed in their corporate names by their respective Presidents or Vice-Presidents, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Executed in duplicate.

[Corporate Seal of Pioche Mines Consolidated, Inc.]

PIOCHE MINES CONSOLIDATED, INC.,

By Percy H. Clark, Vice-President.

Attest: H. A. McCarthy, Assistant Secretary.

[Corporate Seal of Fidelity-Philadelphia Trust Company]

FIDELITY-PHILADELPHIA TRUST COMPANY,

By N. C. Denney, Vice-President.

Attest: H. W. Woodward, Asst. Secretary.

State of Pennsylvania,
County of Philadelphia—ss.

On this 31st day of December, 1928, before me personally came Percy H. Clark, who, being by me duly sworn, said, that he resides in Cynwyd, State of Pennsylvania, that he is Vice President of Pioche Mines Consolidated, Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said Corpora-

Exhibit "A"—(Continued)

tion; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said Corporation, and that he signed his name thereto by like authority.

[Seal] LOUISE F. McCARTHY,
Notary Public.

Commission expires at end of next session of Senate.

State of Pennsylvania,
County of Philadelphia—ss.

On this thirty-first day of December, 1928, before me personally came N. C. Denney, who, being by me duly sworn, said, that he resides in the City of Philadelphia and State of Pennsylvania; that he is a Vice President of Fidelity-Philadelphia Trust Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said Corporation, and that he signed his name thereto by like authority.

I am not a stockholder, director or officer of said Trust Company.

[Seal] G. H. ZACHERLE,
Notary Public.

Commission expires March 6, 1931.

* * * * *

EXHIBIT "D"

This Agreement, made as of the first day of October, 1930, between Pioche Mines Consolidated, Inc., a corporation organized and existing under the laws of the State of Nevada (hereinafter called the "Company"), party of the first part, and Fidelity-Philadelphia Trust Company, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called "Trustee"), party of the second part.

Whereas, the Company has deemed it necessary to borrow money for its corporate purposes and to that end has duly determined to issue its Debenture Bonds, not exceeding the aggregate principal amount of One Million Dollars, to be designated as its "Convertible Seven Per Cent. Sinking Fund Gold Debentures" (hereinafter referred to as "Bonds"), to be dated as of October 1, 1930, to mature October 1, 1937, to bear interest from October 1, 1930, at the rate of seven per cent. (7%) per annum, payable semi-annually on April 1 and October 1 in each year, both principal and interest to be payable at the office of Fidelity-Philadelphia Trust Company in the City of Philadelphia, Pennsylvania, and all the Bonds to be signed in the name of the Company by its President or a Vice President, to be impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, and to be authenticated by the certificate of the Trustee endorsed thereon, and to have interest coupons attached, executed with the facsimile signature of its Treasurer or any past or future Treasurer, and to be issued pursuant to terms

Exhibit "D"—(Continued)

and conditions set forth in this Trust Agreement, which Bonds, interest coupons and Trustee's certificate are to be substantially in the following forms, respectively:

No. (Form of Bond) $

United States of America
State of Nevada

Pioche Mines Consolidated Inc.

Convertible Seven Per Cent. Sinking Fund Gold Debenture

Pioche Mines Consolidated, Inc., a corporation of the State of Nevada (hereinafter called the "Company"), for Value Received, promises to pay to Bearer (or, if this Debenture be registered, to the registered owner hereof), the principal sum of Dollars on October 1, 1937, and to pay interest thereon from October 1, 1930, at the rate of seven per cent. per annum, semi-annually on April 1 and October 1 of each year. Any such interest falling due at or before the maturity of this Debenture shall be paid only upon presentation and surrender of the attached interest coupons as they severally mature.

Both principal and interest of this Debenture are payable at the office of the Trustee hereinafter named, in the City of Philadelphia, Pennsylvania, in gold coin of the United States of America of or equal to the standard of weight and fineness existing October 1, 1930, without deduction for any Federal income tax on or in respect to such interest, which the

Exhibit "D"—(Continued)

Company or its paying agents may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law of the United States of America, up to, but not in excess of, 2 per cent. of such interest.

This is one of an issue of Debentures of the Company, all of like date and similar tenor, except as to the denomination thereof, not exceeding the aggregate principal amount of $1,000,000., all issued pursuant to a certain Trust Agreement, dated as of October 1, 1930, executed between the Company and Fidelity-Philadelphia Trust Company, of Philadelphia, as Trustee, to which Trust Agreement reference is hereby made for the terms thereof. To the extent provided in the said Trust Agreement, all rights of action upon this Debenture prior to October 1, 1937, are vested in the Trustee.

In the manner provided in the said Trust Agreement, this Debenture may be redeemed, at the option of the Company, on any interest date, upon forty-five days' prior notice, at a redemption price equivalent to one hundred and five per cent. (105%) of the principal amount hereof and accrued interest to the date of redemption.

This Debenture shall pass by delivery until registered in the owner's name at the office of the Trustee, such registration being noted hereon. After such registration no further transfer hereof shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney and similarly noted hereon; but this Debenture may be dis-

Exhibit "D"—(Continued)

charged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. This Debenture shall continue to be subject to successive registrations and transfers to bearer, at the option of the owner, but no registration shall affect the negotiability of the attached interest coupons, which shall continue to be payable to bearer and transferable by delivery merely.

In the manner and with the effect provided in the said Trust Agreement, the principal of all the said Debentures at any time issued and outstanding may be declared, or may become, due and payable before maturity upon the happening of one or more of the events described in the said Trust Agreement.

The Debentures of this series shall be convertible at the option of the holders into the Common Stock of the Company in the manner prescribed in the said Trust Agreement, upon giving thirty days' notice as therein provided, at the rate for each One Hundred Dollars ($100.) face value of Debentures with all unmatured coupons attached, of twenty-five (25) shares of stock to and including October 1, 1934, and of twenty (20) shares of stock after said date to and including October 1, 1935, after which latter date they will not be convertible. In the event that no cash dividend shall have been declared or paid on the Common Stock within six (6) months prior to the date of conversion, the holders of the Debentures surrendered in conversion, in addition to the stock

Exhibit "D"—(Continued)

into which Debentures are convertible, shall be entitled to receive an amount in cash equal to the interest accrued and unpaid on the Debentures surrendered to the date of conversion. If a cash dividend on the Common Stock shall have been declared or paid within six (6) months prior to the date of conversion, any difference between the accrued and unpaid interest on the surrendered Debentures and the accruing dividends on the stock to be issued in conversion shall be adjusted in cash on the conversion date, such dividends to be computed at the rate per annum of the last dividend on the Common Stock paid or declared. In case this Debenture is called for redemption on a redemption date prior to the expiration of the conversion privilege, the holder hereof may still exercise his right to convert on or before the redemption date, provided he gives the required notice at least thirty (30) days prior to the date fixed for redemption.

No recourse shall be had for the payment of any part of either principal or interest of this Debenture, or for any claim based hereon, or otherwise in any manner in respect hereof or in respect of the said Trust Agreement, or of the indebtedness represented hereby, to or against any incorporator, stockholder, officer or director, past, present or future, of the Company or of any predecessor, or successor corporation, or to or against the legal representatives or assigns of any such incorporator, stockholder, officer or director, either directly or through the Company or any such predecessor or successor corpora-

Exhibit "D"—(Continued)

tion, whether by virtue of any statute or constitutional provision or rule of law, or by the enforcement of any assessment or penalty or otherwise, or in any manner; all such liability, by the acceptance hereof, and as part of the consideration for the issue hereof, being expressly released, as provided in the said Trust Agreement.

This Debenture shall not be valid or obligatory for any purpose until authenticated by the execution by the Trustee of the certificate endorsed hereon.

In Witness Whereof, the Company has caused this Debenture to be signed in its corporate name by its President or a Vice-President and impressed with its corporate seal, attested by its Secretary or an Assistant Secretary, and the attached interest coupons to be executed with the facsimile signature of its Treasurer, as of October 1, 1930.

PIOCHE MINES CONSOLIDATED, INC.,

By .....

President.

Attest:

.....

Secretary.

No. (Form of Interest Coupon) $

On the first day of , 19 , unless the Debenture herein mentioned shall have been called for redemption on or prior to such date, Pioche Mines Consolidated, Inc., will pay to Bearer at the office of Fidelity-Philadelphia Trust Company, in

Exhibit "D"—(Continued)

the City of Philadelphia and State of Pennsylvania, Dollars in United States gold coin, without deduction for any Federal income tax thereon or in respect thereto, up to, but not in excess of 2 per cent. of the said sum, being six months' interest then due on its Convertible Seven Per Cent. Sinking Fund Gold Debenture No.

.....

Treasurer

(Form of Trustee's Certificate)

This is one of the Debentures described in the within-mentioned Trust Agreement.

FIDELITY-PHILADELPHIA TRUST COMPANY, Trustee,

By .....

Vice-President.

And Whereas, all things necessary to make the Bonds, when duly authenticated by the Trustee, the valid, binding and legal obligations of the Company, and the execution and delivery of this Agreement and the issue of the Bonds, as in this Agreement provided, have been in all respects duly authorized;

Now, Therefore, This Agreement Witnesseth: That in consideration of the premises and of the purchase or acceptance of the Bonds by those who shall hold the same from time to time, and of the sum of One Dollar by each of the parties hereto to the other duly paid, the receipt whereof is hereby acknowledged, The Parties Hereto Hereby Covenant

Exhibit "D"—(Continued)

and Agree, for the equal benefit, security and protection of the legal holders of the Bonds and the interest coupons pertaining thereto, without preference of any of the Bonds or interest coupons over any of the others by reason of priority in the time of issue, sale or negotiation thereof, or otherwise for any cause whatever, except as otherwise provided in Section 8 hereof, as follows:

Article First

Designation, Form, Issue, Authentication and Registration of Bonds

Section 1. The Bonds to be issued under this Agreement shall be designated as the Company's 'Convertible Seven Per Cent. Sinking Fund Gold Debentures,' and they and the interest coupons attached thereto shall be substantially in the forms and of the tenor hereinbefore recited, respectively.

Section 2. The Company shall execute in the manner hereinbefore recited and deliver to the Trustee from time to time not to exceed One Million Dollars, aggregate principal amount, of Bonds in the denominations of $100, $500 and $1000, in such amounts as to each denomination as the Company may determine; and the Trustee shall authenticate the same and deliver the Bonds so authenticated to or upon the written order of the Company, signed by its President or a Vice-President. Except as herein otherwise expressly provided with respect to the exchange or substitution of Bonds on certain contin-

Exhibit "D"—(Continued)

gencies, no further Bonds shall at any time be issued under this Agreement.

Only such Bonds as shall be authenticated by a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to any right or benefit under this Agreement; and such authentication by the Trustee shall be conclusive evidence, and the only competent evidence, that any outstanding Bonds so authenticated has been duly issued hereunder and that the holder is entitled to the benefits hereof.

Section 3. The owner of any definitive Bond may have the ownership thereof registered at the office of the Trustee in the City of Philadelphia and State of Pennsylvania, such registration being noted on the Bond. After such registration, no further transfer of such Bond shall be valid unless made at the said office by the registered owner in person or by duly authorized attorney and similarly noted on the Bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored. Bonds shall continue to be subject to successive registrations and transfers to bearer, at the option of their respective owners; but no registration of any Bond shall affect the negotiability of the interest coupons pertaining thereto, which shall continue to be payable to bearer and transferable by delivery merely.

Section 4. In case any Bond issued hereunder shall be mutilated, or destroyed, the Company, in its

Exhibit "D"—(Continued)

discretion may issue, and thereupon the Trustee shall authenticate and deliver, a new Bond of like denomination, tenor and date, in exchange and substitution for and upon the cancellation of the mutilated Bond and its interest coupons, or in lieu of and in substitution for the Bond and its interest coupons so destroyed, upon receipt of evidence satisfactory to the Company and the Trustee of the destruction of such Bond and its interest coupons, and upon the receipt, also, of indemnity, satisfactory to them; provided, that the Company at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge connected with such issue, and also a further sum, not exceeding two dollars, for each Bond so issued in substitution.

Section 5. The owner of any One Hundred Dollar ($100), and/or Five Hundred Dollar ($500) Bonds of this issue may at any time surrender the same in lots of One Thousand Dollars ($1,000) each in principal amount (accompanied, if registered, by a written instrument of transfer, duly executed) with all unmatured coupons thereto belonging, to the Trustee for cancellation and exchange and thereupon the Company shall issue and the Trustee shall authenticate and deliver to such owner a Bond or Bonds of the denomination of One Thousand Dollars ($1,000) each and representing an equivalent obligation for principal and interest. There shall always be reserved uncertified a sufficient number of One Thousand Dollar ($1,000) Bonds to represent all One

Exhibit "D"—(Continued)

Hundred Dollar ($100) and Five Hundred Dollar ($500) Bonds at any time outstanding.

Article Second

Covenants of the Company

The Company covenants with the Trustee and the holders of the Bonds as follows:

Section 6. The Company will duly and punctually pay or cause to be paid the principal and interest of all the Bonds duly issued hereunder according to the terms thereof and of this Agreement, without deduction for any Federal income tax on or in respect to such interest, which the Company or its paying agents may be required or permitted to pay thereon or to retain or deduct therefrom under any present or future law of the United States of America, up to, but not in excess of, 2 per cent. of such interest.

Section 7. So long as any of the Bonds remain outstanding and unpaid, the Company will at all times keep an agency in the City of Philadelphia and State of Pennsylvania, where notices and demands in respect of such Bonds and of this Agreement may be served, and will, from time to time, give notice to the Trustee of the location of such agency; and, in case the Company shall fail so to do, notices may be served and demands may be made at the office of the Trustee in the City of Philadelphia and State of Pennsylvania. The Company will at all times keep or cause to be kept at the said office of the Trustee books in which the ownership of any

Exhibit "D"—(Continued)

Bonds may be registered, upon the presentation thereof for such purpose, as provided in Section 3 hereof.

Section 8. So long as any of the Bonds remain outstanding and unpaid, the Company will not directly or indirectly extend or assent to the extension of the time for the payment of any interest coupon or claim for interest of or upon any Bond, and it will not directly or indirectly be a party to any arrangement therefor, either by purchasing or refunding or in any manner keeping alive such interest coupon or claim for interest, or otherwise. In case the payment of any such interest coupon or claim for interest shall be so extended by or with or without the consent of the Company, then, anything in this Agreement contained to the contrary notwithstanding, such interest coupon or claim for interest so extended shall not be entitled, in case of default hereunder, to any benefit of or from this Agreement, except after the prior payment in full of the principal of all the Bonds issued hereunder and of all such interest coupons and claims for interest as shall not have been so extended.

Section 9. So long as any of the Bonds remain outstanding and unpaid, the Company will not execute any mortgage upon, or make any pledge of, or create any lien (legal or equitable) on, any of its properties (real or personal) or on the properties of any subsidiary company, as security for any bond or bonds or funded obligations of any character, but

Exhibit "D"—(Continued)

the Company may acquire additional properties under and subject to existing mortgages.

Article Third

Redemption of Bonds

Section 10. The Company at its option may redeem the Bonds outstanding hereunder on any interest date either as a whole or in part from time to time by paying therefor the par value thereof and a premium of five per cent. (5%) and all accrued interest thereon. In case the Company shall desire so to redeem less than all the Bonds outstanding on the date on which it desires to make redemption, the Company shall notify the Trustee in writing of the aggregate principal amount of the Bonds which it desires to redeem, specifying the date (which shall not be less than sixty days after such notification) on which it desires to make redemption. As soon as practicable thereafter (and, in any event, within ten days) the Trustee shall determine, by lot, in any manner deemed by the Trustee to be fair, the particular serial numbers of the Bonds to be redeemed and shall certify to the Company the serial numbers of the Bonds so determined. The Company shall thereupon cause notice of redemption to be published in one daily newspaper of general circulation published in the City of Philadelphia, State of Pennsylvania, once a week for six successive weeks, the first publication to be not less than forty-five days prior to the date of such redemption, notice of such intended redemption, specifying the date of redemption, the serial numbers of the Bonds to be redeemed

Exhibit "D"—(Continued)

and requiring that the same be then surrendered at the office of the Trustee in the City of Philadelphia, State of Pennsylvania, for redemption at the said redemption price, and giving notice, also, that the interest on the Bonds so called for redemption shall cease on the designated redemption date. At least forty-five days prior to the redemption date, a similar notice shall also be mailed by the Trustee, postage prepaid, to the respective registered owners of any Bonds called for redemption, at their addresses appearing on the registry books. The Company, on or before the redemption date designated in such notice, shall deposit with the Trustee an amount in cash sufficient to redeem all the Bonds designated in the notice except to the extent that such bonds are to be redeemed out of Sinking Fund moneys as hereinafter provided.

In case the Company shall desire to redeem all of the Bonds outstanding on the date on which it desires to make redemption, it shall give notice thereof in like manner by publication and mailing, except that the notice need not specify the serial numbers of the Bonds to be redeemed.

Section 11. Notice of redemption having been given by publication and mailing, as provided in Section 10 hereof, the Bonds so called shall, on the date designated in such notice, become due and payable at the office of the Trustee, and, upon presentation and surrender thereof, with all interest coupons maturing on and subsequently to the redemption date, and, in the case of Bonds which shall at any time be

Exhibit "D"—(Continued)

registered, accompanied by duly executed assignments or transfer powers, such Bonds shall be paid and redeemed at the said redemption price out of the funds so deposited with the Trustee. After the date so fixed for redemption (unless the Company shall make default in providing for the payment thereof), the Bonds so called shall cease to bear further interest and thereafter said bonds shall not be entitled to any benefit of or from this agreement, but shall be entitled solely to payment out of said moneys held for their redemption by the Trustee.

Section 12. All Bonds purchased or redeemed pursuant to any of the provisions of this Article Third shall forthwith be cancelled by the Trustee and delivered to or upon the written order of the Company. All expenses of any character shall be borne and paid by the Company.

Article Fourth

Conversion of Bonds

Section 13. The bonds to be authenticated and issued under the provisions of this trust agreement shall be convertible at the option of the holders into common stock of the Company on the following basis, to-wit: For each $100. principal amount of bonds with all unmatured coupons attached—

25 shares of stock if the date of conversion is on or before October 1, 1934, and

20 shares of stock if the date of conversion is after October 1, 1934, and on or before October 1, 1935.

Exhibit "D"—(Continued)

After October 1, 1935, said bonds will not be convertible into stock. In the event that no cash dividend shall have been declared or paid on the Common Stock within six (6) months prior to the date of conversion (to be determined as hereinafter set forth), the holders of the Bonds surrendered in conversion, in addition to the stock into which said Bonds are convertible, shall be entitled to receive an amount in cash equal to the interest accrued and unpaid on the Bonds surrendered to the date of conversion. If a cash dividend on the Common Stock shall have been declared or paid within six (6) months prior to the date of conversion, any difference between the accrued and unpaid interest on the surrendered Bonds and the accruing dividends on the stock to be issued in conversion shall be adjusted in cash on the conversion date, such dividends to be computed at the rate per annum of the last dividend on the Common Stock paid or declared. In case any Bond is called for redemption on a redemption date prior to the expiration of the conversion privilege, the holder thereof may still exercise his right to convert on or before the redemption date, provided he gives written notice at least thirty (30) days prior to the date fixed for redemption, as hereinafter set forth.

Any holder of any such Bond wishing to exercise his right of conversion must, at least thirty days prior to the time when the conversion is to take place, give written notice to the Company, addressed and delivered to it either at the office of the Trustee in the City of Philadelphia, State of Pennsylvania,

Exhibit "D"—(Continued)

or at the office of the Company in the Town of Pioche, State of Nevada, setting forth the intention of the bondholder to convert his Bonds, the amount of Bonds to be converted, the serial numbers thereof, the name or names in which the Stock to be issued in exchange therefor shall be issued, and the date of conversion (which shall not be less than thirty days after the giving of such notice) and must also at the time of giving such notice surrender to the Company at one or the other of said offices the Bonds to be converted, in negotiable form, with all unmatured coupons attached thereto, and the Company will in due course deliver to the bondholder at the office where the Bonds were surrendered certificates, registered in the name indicated, for the Stock issuable in exchange for the Bonds surrendered at which time there shall be an adjustment of interest and dividends as hereinafter provided. The Company will deliver all Bonds so surrendered to it to the Trustee and the Trustee will cancel all such Bonds, and also all Bonds surrendered at its office for conversion and deliver the same to the Company or upon the written order of the Company.

In case the Company, before the expiration of the conversion privilege, shall retire its common stock of the class outstanding at the date of this indenture by issuing in exchange therefor stock of any other class (either preferred or without par value, or differing in any other particular) the right of the bondholders to convert shall continue unchanged, except that upon conversion they shall receive stock of the

Exhibit "D"—(Continued)

new class or classes in amount equivalent (according to the exchange offer) to the common stock to which they would have been entitled had no such exchange been made. In case the Company shall sell to or merge or consolidate with any other company on a basis which involves the delivery of new stock or other securities or assets of the purchasing or consolidated company in exchange for said common stock or the stock of such new class or classes issued in place thereof, the Company shall promptly publish notice of such sale or merger or consolidation in one newspaper of general circulation published in the City of Philadelphia, State of Pennsylvania, and the bondholder shall have the right for a period of ninety (90) days from and after the first publication (whether or not such period of ninety days shall extend beyond October 1, 1935, the date on which the conversion right would otherwise expire), to convert into such new stock or other securities or assets at the rate of One hundred dollars ($100.00) principal amount of bonds for such an amount of said stock or other securities or assets as, under the terms of such sale, merger or consolidation, are exchangeable to retire the number of shares of common stock to which the said bondholder would have been entitled had no new or other securities or assets been issued in place thereof. In case of any such sale, merger or consolidation, the right to convert any bond shall terminate upon the failure of the holder thereof to give the notice in this section provided for within the said period of ninety days.

Exhibit "D"—(Continued)

The Company will pay any and all United States Internal Revenue stamp taxes and any and all stock original issue or transfer stamp taxes of the State of Nevada which may be payable in respect to the issue and delivery of any stock or stock certificates, in pursuance of any of the provisions of this Section, and it will provide such stamps therefor as may be required by law. All shares of stock issued upon any conversion shall be full paid and non-assessable.

If at the time of the conversion of the principal of any Bond or Bonds into the stock of the Company, as provided in this Section, a cash adjustment is to be made between the Company and the holder of the Bond or Bonds so surrendered in respect to the accrued interest thereon and the current dividends on the shares of stock represented by the certificates delivered on such conversion, such adjustment shall be made on such basis approved by the Trustee as equitable and under such proper regulations and provisions not inconsistent herewith as the Board of Directors of the Company shall from time to time prescribe.

In case the Company and the Trustee shall be unable to agree upon a basis of adjustment which the Trustee considers equitable, then the Trustee may in its discretion fix such basis and the determination of the Trustee in that regard shall be final and conclusive upon the Company and all the holders of Bonds.

Nothing contained in this Trust Agreement, or in any of the Bonds, shall be construed to confer upon

Exhibit "D"—(Continued)

the holder of any Bond, as such, any of the rights of a stockholder in the Company before he shall have actually become such stockholder by converting such Bond into the stock of the Company, as herein provided; and no holder of any Bond, as such, shall have any right to participate in or question the issue by the Company, for cash or property, of any additional or increased capital stock of the Company of any class, or securities of the Company of any kind (unless to question a proposed issue of securities as in violation of Section 9 hereof.).

Article Fifth

Sinking Fund

Section 14. The Company will pay to the Trustee on the tenth day of each month after the mill (now under construction) goes into commercial operation, for and on account of a Sinking Fund, out of payments received during the previous calendar month for concentrates sold, One Dollar ($1.00) per ton of ore from the Company's mines, milled to produce the concentrates so sold and paid for and, in addition, one cent (1c) per kilowatt hour of power generated by the Company during such previous calendar month.

All amounts thus received for the Sinking Fund by the Trustee shall be invested by the Trustee in so many of the Bonds issued hereunder as the Trustee shall be able to purchase either with or without advertisement at a price not exceeding par, plus five per cent. (5%) premium and accrued interest, pref-

Exhibit "D"—(Continued)

erence to be given by the Trustee to the Bonds offered at the lowest price. If at any time the Trustee shall be unable to purchase Bonds for the Sinking Fund at not exceeding said price, then it shall be the duty of the Trustee, upon the written request of the Company, either

(a) To apply any moneys in the Sinking Fund to the redemption of Bonds of this issue called for redemption by the Company in the manner provided in Section 10 hereof;

After receipt of notice from the Company that it proposes to apply Sinking Fund moneys to the redemption of a designated number of Bonds, a sufficient sum shall be set aside by the Trustee out of the Sinking Fund to redeem the Bonds so called.

or

(b) To invest any moneys in the Sinking Fund in excess of Fifty Thousand Dollars ($50,000) (which amount shall be set aside for the purchase of bonds at not exceeding the redemption price as above provided) in securities recognized as legal investments for Trustees by the laws of the State of Pennsylvania.

The Sinking Fund in whatever form until used for the retirement of Bonds under this Article, shall be held by the Trustee for the benefit of the bondholders hereunder.

The uninvested portion of all Sinking Fund moneys from time to time in the hands of the Trustee shall draw interest at the current rate paid by the Trustee upon like funds held by it on deposit.

The Company covenants and agrees that it will not

Exhibit "D"—(Continued)

sell to the Sinking Fund any of the bonds issued hereunder and held in its treasury except such Bonds as may have been previously marketed and bought in by it.

If at any time the amount of cash, plus securities at their market value held in the Sinking Fund, shall be equal to or exceed one hundred and five per cent. (105%) of the face value of the Bonds at the time outstanding hereunder, the Company shall be under no obligation to make any further Sinking Fund payments as long as this condition shall continue.

Article Sixth

Remedies in Case of Default

Section 15. In case any one or more of the following events (hereinafter called "defaults") shall happen:

(a) Default in the payment of any instalment of interest on any of the Bonds, which default shall continue for a period of thirty days;

(b) Default in the performance, or a violation, of any other covenant, condition or agreement on the part of the Company in any of the bonds or in this Agreement contained, which default shall continue for a period of thirty days after written notice thereof shall have been given to the Company by the Trustee, which may, in its discretion, give such notice, and shall do so upon the written request of the holders of 50 per cent. in aggregate principal amount of the Bonds then outstanding; or

(c) By decree of a court of competent jurisdic-

Exhibit "D"—(Continued)

tion, the Company shall be adjudicated a bankrupt, or by order of any such court a receiver of the property of the Company shall be appointed and such order shall have been continued in effect for a period of thirty days, or the Company shall file a voluntary petition in bankruptcy or shall make an assignment for the benefit of creditors;

then, in any such case, the Trustee, by written notice to the Company, may, and shall, upon the written request of the holders of 50 per cent. in aggregate principal amount of the Bonds then outstanding, declare the principal of all the Bonds then outstanding to be due and payable immediately; and, upon such declaration, the same shall become immediately due and payable, anything in this Agreement or in any of the Bonds contained to the contrary notwithstanding; provided, that if, at any time, either before or after the principal of the Bonds shall have been so declared due and payable, and before any judgment shall have been obtained by the Trustee against the Company, all arrears of interest upon all the Bonds, with interest on overdue instalments of interest at the rate of 7 per cent. per annum, together with the reasonable charges and expenses of the Trustee, its agents, attorneys and counsel, shall have been paid by the Company and any and every other default by reason of the happening of which the principal of any of the Bonds may have been, or might be, declared due hereunder shall have been remedied and made good, then, in each such case, the holders of

Exhibit "D"—(Continued)

a majority in aggregate principal amount of the Bonds then outstanding, by written notice to the Company and to the Trustee, may waive such default and its consequences and rescind any such declaration; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 16. If default be made by the Company in the payment of the principal or interest of any of the Bonds, whether the same shall become due by declaration or otherwise, then, in each such case, upon demand of the Trustee, the Company agrees to pay to the Trustee for the benefit of the holders of the Bonds and interest coupons then outstanding, the whole amount then due and payable on all such outstanding Bonds and interest coupons, with interest upon overdue instalments of interest at the rate of 7 per cent. per annum, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder; and in case the Company shall fail to pay the same forthwith upon demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Company for the whole amount thereof and to issue execution therefor against the whole or any part of the property of the Company, real or personal.

Any moneys collected by the Trustee under this

Exhibit "D"—(Continued)

Section 16 shall be applied by the Trustee, subject to the provisions of Section 8 hereof, as follows:

First: To the payment of the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and to the payment of all prior unpaid charges and expenses of the Trustee or its counsel, and all expenses and liabilities incurred or advanced, or disbursements made, by the Trustee;

Second: To the payment of the whole amount then due and unpaid either for principal or interest, or for both principal and interest, upon the Bonds, with interest on overdue instalments of interest at the rate of seven per cent. per annum; and, in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid, then, to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest;

Third: To the payment of the remainder (if any) to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 17. All remedies conferred by this Agree-

Exhibit "D"—(Continued)

ment shall be deemed cumulative and not exclusive, and shall not be so construed as to deprive the Trustee of any legal or equitable remedy by judicial proceedings appropriate to enforce the conditions, covenants and agreements of this Agreement or to enjoin the violation thereof.

No delay or omission by the Trustee, or by any holder of any Bond, to exercise any right or power arising from any default hereunder shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Trustee, or to the holders of the Bonds may be exercised, from time to time, and as often as may be deemed expedient.

Section 18. In case the Trustee shall have proceeded to enforce any remedy or power under this Agreement, and such proceedings shall have been discontinued or abandoned, because of waiver, or for any other reason, or shall have been determined adversely, then, in each and every such case, the Company and the Trustee and the respective holders of the Bonds shall be severally and respectively restored to their former positions and rights hereunder; and all rights, remedies and powers of the Trustee and of the respective holders of the Bonds shall continue as though no such proceedings had been taken. No waiver of any default or its consequences, under any

Exhibit "D"—(Continued)

of the provisions of this Article Sixth shall extend to or affect any subsequent default, or impair any right consequent thereon.

Section 19. Prior to October 1, 1937, no holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding, at law or in equity, for the collection of any sum due from the Company on such Bond, for principal or interest, or upon or in respect of this Agreement, or for the Execution of any trust or power hereof, or for any other remedy or right under or upon this Agreement, unless such holder shall previously have given to the Trustee written notice of an existing default, and unless, also, such holder or holders shall have tendered to the Trustee security and indemnity satisfactory to it against all costs, expenses and liabilities which might be incurred in or by reason of such action, suit or proceeding, and unless, also, the holders of fifty per cent. in aggregate principal amount of the Bonds then outstanding shall have requested the Trustee in writing to take action in respect of such default and the Trustee shall have declined or failed to take such action within thirty days thereafter; it being intended that no one or more holders of Bonds shall have any right in any manner to enforce any right hereunder, or under or in respect of any of the Bonds, except in the manner herein provided, and for the equal proportionate benefit of all holders of outstanding Bonds; provided, that nothing contained in this Section 19 or elsewhere in this Agreement, or in any Bond, shall

Exhibit "D"—(Continued)

affect or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of the Bonds to the respective holders thereof, at the time and place expressed in the Bonds, or to pay the redemption price thereof to the respective holders of any Bonds which may be called for redemption, on the date designated therefor, or affect or impair the right of action, of such holders to enforce and collect such payment by appropriate action, suit or proceeding.

Article Seventh

Miscellaneous Provisions

Section 20. Any demand, request or other instrument required or provided by this Agreement to be signed or executed by the holders of any Bonds may be in any number of concurrent writings of similar tenor, and may be signed or executed by such holders in person, or by attorney appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such attorney, and of the ownership by any person of any Bonds, shall be conclusive in favor of the Trustee and of the Company, with regard to due action taken by the Trustee or by the Company pursuant to such instrument, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request or other instrument may be proved by the certificate of any notary public or any officer of any jurisdiction authorized by the

Exhibit "D"—(Continued)

laws thereof to take acknowledgments of deeds to be recorded in any State within the United States of America, certifying that the person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution, duly sworn to before any such notary public or other officer.

The fact of the ownership of any Bonds which shall not at the time be registered and the amounts and serial numbers of such Bonds and the date of holding the same, may be proved by a certificate executed by any trust company, bank, banker or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned the person named in such certificate had on deposit with such depositary the Bonds described in such certificate, but the Trustee, in its discretion, may require such other and further proof of such ownership as, being advised by counsel, it shall deem advisable. For all purposes of this Agreement and of any proceeding pursuant hereto for the enforcement hereof or otherwise, such person shall be deemed to continue to be the owner of such Bonds until the Trustee shall have received notice in writing to the contrary.

Section 21. As to all Bonds which shall at the time be registered, the person in whose name the same shall be registered on the books of the Company shall for all purposes of this Agreement be deemed and regarded as the owner thereof, and

Exhibit "D"—(Continued)

payment of or on account of the principal of any such Bond so registered shall be made only to or upon the order of such registered holder. Such payment shall be valid and effectual to satisfy and discharge the liability of the Company upon such Bonds to the extent of the sum or sums so paid.

The holder of any Bond which shall not at the time be registered, and the holder of any interest coupon pertaining to any Bond, whether such Bond be registered or not, shall for all purposes of this Agreement be treated as the absolute owner of such Bond or interest coupon; and neither the Company nor the Trustee shall be affected by any notice to the contrary.

Section 22. No recourse shall be had for the payment of any part of either principal or interest of any Bond or for any claim based thereon or otherwise in any manner in respect thereof or of the indebtedness represented thereby or in respect of this Agreement, to or against any incorporator, stockholder, officer or director, past, present or future, of the Company, or of any predecessor or successor corporation, (or to or against the legal representatives or assigns of any such incorporator, stockholder, officer or director,) either directly or through the Company, or any such predecessor or successor corporation, whether by virtue of any statute or constitutional provision or rule of law, or by the enforcement of any assessment or penalty, or otherwise, or in any manner.

Section 23. All the covenants, stipulations and

Exhibit "D"—(Continued)

agreements in this Agreement contained by or on behalf of the Company, are and shall be for the sole and exclusive benefit of the parties hereto and of the respective holders of the Bonds and interest coupons issued hereunder. Whenever, in this Agreement, any of the parties hereto is referred to, such reference shall be deemed to include the successor or successors and assigns of such party; and all covenants, promises and agreements in this Agreement contained by or on behalf of the Company, or by or on behalf of the Trustee, shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

Article Eighth

Concerning the Trustee

Section 24. The Trustee accepts the trusts of this Agreement and agrees to execute the same upon the terms and conditions hereof, including the following, to all of which the Company and the holders of the Bonds agree:

The Trustee shall be under no obligation to see to the performance or observance of any of the covenants or agreements on the part of the Company.

The Trustee shall not be accountable in respect of the validity of this Agreement or of the Bonds; and it makes no representation in respect thereof.

The Trustee shall not be responsible for the re-

Exhibit "D"—(Continued)

citals herein or in the Bonds contained, all of which are made by the Company, solely.

The Trustee shall be entitled to reasonable compensation for all services rendered hereunder, and such compensation, and that of its counsel and of such persons as it may employ in the administration of the trusts hereby created, as well as all reasonable expenses necessarily incurred and actually disbursed hereunder, the Company agrees to pay.

Until the Trustee shall have received written notice to the contrary from the holders of not less than fifty per cent. in aggregate principal amount of the Bonds at the time outstanding, the Trustee may, for all the purposes of this Agreement, assume that no default has been made in the payment of any of the Bonds or of the interest thereon, or in the observance or performance of any other of the covenants contained in the Bonds or in this Agreement, and that the Company is not in default under this Agreement.

The Trustee shall not be under any obligation to take any action hereunder, which in its opinion will be likely to involve it in expense or liability, unless one or more holders of Bonds shall, as often as required by the Trustee, furnish it security and indemnity satisfactory to it against such expense and liability; nor shall the Trustee be required to take any action in respect of any default hereunder unless requested by an instrument in writing signed by the holders of not less than fifty per cent. in aggregate principal amount of the Bonds then outstanding.

Exhibit "D"—(Continued)

Any action taken by the Trustee at the request or with the consent of any person who at the time is the owner of any Bond shall be conclusive and binding upon all future holders of such Bond.

The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, nor for any error of judgment, nor for any act done or omitted by it in good faith, nor for any mistake of fact or of law, nor for anything whatever in connection with this Agreement, except for its own wilful misconduct.

The Trustee may advise with legal counsel, who may be counsel for the Company; and any action under this Agreement, taken or suffered in good faith by the Trustee in accordance with the opinion of counsel, shall be conclusive on the Company and on all holders of Bonds, and the Trustee shall be fully protected in respect thereto.

The Trustee shall be protected in acting upon any notice, request, waiver, consent, certificate, affidavit, indemnity bond or other instrument believed by it to be genuine and to be signed by the proper party or parties.

The Trustee, in its individual capacity, or otherwise, may acquire and hold any Bonds issued hereunder with the same right and to the same extent as if it were not such Trustee.

Exhibit "D"—(Continued)

All moneys coming into the hands of the Trustee may be treated by it, until such time as it is required to pay out the same, as a general deposit, and the interest (if any) paid thereon shall be at such rate as the Trustee allows on similar deposits.

All rights of action under this Agreement may be enforced by the Trustee without the possession of any Bonds or the production thereof on the trial or other proceedings relative thereto.

Section 25. The Trustee or any successor may resign as Trustee hereunder by filing with the Company an instrument in writing, resigning the trusts hereby created, two weeks (or such shorter time as may be accepted by the Company as adequate) before such resignation shall take effect.

Any Trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee for the time being acting hereunder and executed by the holders of two-thirds in aggregate principal amount of the Bonds then outstanding; provided, there be paid to the Trustee so removed all moneys due to it hereunder.

Section 26. In case, at any time, any Trustee acting hereunder shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in aggregate principal amount of the bonds then out-

Exhibit "D"—(Continued)

standing by an instrument signed by such holders or their attorneys in fact duly authorized, and delivered to such successor; but until a new trustee shall be so appointed hereunder, the Company may, by an instrument in writing, executed by order of its Board of Directors, appoint a Trustee to fill such vacancy. Any new Trustee so appointed by the Company shall immediately be superseded by a Trustee appointed in the manner above provided by the holders of a majority in aggregate principal amount of the outstanding Bonds.

Any Trustee appointed under any of the provisions of this Article Eighth shall always be a national banking association or other bank or trust company having an office in the City of Philadelphia, and having a capital and surplus aggregating at least One Million Dollars, if there shall be such a banking association, bank or trust company willing and able to accept the trusts upon reasonable or customary terms.

Section 27. Any successor Trustee appointed hereunder shall execute and deliver to the Company and to the retiring Trustee an instrument accepting such appointment hereunder, and thereupon such successor Trustee shall be invested with the same authority, rights, powers, duties and discretion

Exhibit "D"—(Continued)

herein provided for the Trustee; but the Trustee so resigning or removed, shall, at the request of the Company, or of the successor Trustee so appointed, and upon payment of its charges and disbursements then unpaid, make and execute such deeds, conveyances, assignments or assurances to its successor as its successor may reasonably require, and shall deliver to such successor all cash then in its possession hereunder.

In Witness Whereof, the Company and the Trustee have caused this Agreement to be signed in their corporate names by their respective presidents or Vice Presidents, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

Executed in duplicate.

[Seal of Pioche Mines
Consolidated, Inc.]

PIOCHE MINES CONSOLIDATED, INC.
PERCY H. CLARK, Vice-President.

Attest: H. A. McCARTHY, Ass't Secretary.

[Seal of Fidelity-Philadelphia
Trust Company]

FIDELITY-PHILADELPHIA TRUST COMPANY,
S. W. COUSLEY, Vice-President.

Attest: H. W. WOODWARD, Asst. Secretary.

Exhibit "D"—(Continued)

State of Pennsylvania,
County of Philadelphia—ss.

On this first day of October, 1930, before me, the undersigned authority duly commissioned and qualified, personally came Percy H. Clark, who, being by me duly sworn, said, that he resides in Cynwyd, Pa., that he is Vice-President of Pioche Mines Consolidated, Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of the said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said Corporation, and that he signed his name thereto by like authority.

PERCY H. CLARK

Witness my hand and official seal the day and year aforesaid.

[Seal] ANDREW B. McGINNIS,
Notary Public.

Commission expires March 10, 1933.

State of Pennsylvania,
County of Philadelphia—ss.

On this first day of October, 1930, before me, the undersigned authority duly commissioned and qualified, personally came S. W. Cousley, who, being by me duly sworn, said, that he resides in Wynnewood, State of Pennsylvania; that he is a Vice-President of Fidelity-Philadelphia Trust Company, one of the corporations described in and which executed the

Exhibit "D"—(Continued)

foregoing instrument; that he knows the seal of the said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said Corporation, and that he signed his name thereto by like authority.

S. W. COUSLEY

Witness my hand and official seal the day and year aforesaid.

I am not a stockholder, director or officer of said Trust Company.

[Seal] G. H. ZACHERLE,
Notary Public.

Commission expires March 6, 1931.

EXHIBIT "H"

PIOCHE DEBENTURE-HOLDERS' REQUEST DATED AS OF FEBRUARY 1, 1939.

To Fidelity-Philadelphia Trust Company, Trustee under Trust Agreement dated as of January 2, 1929, between Pioche Mines Consolidated, Inc. and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $500,000., to be designated as Five Year Seven Per Cent. Convertible Debentures, which mature, as extended, on October 1, 1941 (hereinafter referred to as Debentures of '29);

Exhibit "H"—(Continued)

Fidelity-Philadelphia Trust Company, Trustee under Trust Agreement dated as of October 1, 1930, between Pioche Mines Consolidated, Inc. and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $1,000,000., to be designated as Convertible Seven Per Cent. Sinking Fund Gold Debentures, which mature, as extended, on October 1, 1941 (hereinafter referred to as Debentures of '30).

Whereas, the coupons appertaining to the Debentures of '29 which matured on January 1 and July 1, 1938, and January 1, 1939, and the Debentures of '30, which matured on April 1 and October 1, 1938, have not been paid, the period of thirty days' grace for the payment of interest provided for in said Trust Agreements has expired as to the coupons on each of said dates, and said interest is now in default;

Now, Therefore, We, the undersigned holders of the amounts of Debentures outstanding under said Trust Agreements set opposite our names respectively, constituting altogether more than 50% in aggregate principal amount of the Debentures of each of said issues, request the Fidelity-Philadelphia Trust Company——

1. To declare the principal of all of the Debentures now outstanding under each of said Agreements to be due and payable immediately by giving written notice to the Pioche Company, as provided for in each of said Trust Agreements.

Exhibit "H"—(Continued)

2. To demand of the said Pioche Company payment to you for the benefit of the holders of the Debentures and interest coupons then outstanding, of the whole amount due and payable on all of such outstanding Debentures and interest coupons under each of said Agreements, with interest upon overdue instalments of interest at the rate of 7% per annum, and in addition thereto such further amounts as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Fidelity, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Fidelity under said Trust Agreements.

This written request shall not be binding until signed by the holders of 50% in aggregate principal amount of the Debentures of '29 and of the Debentures of '30.

Name of Debenture-Holder	Debentures of '29	Debentures of '30
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EXHIBIT "I"

NOTICE AND DEMAND

June 21, 1939

Pioche Mines Consolidated, Inc.
Pioche, Nevada.

Gentlemen:

You are hereby notified that Fidelity-Philadelphia Trust Company, Trustee under Trust Agreement dated as of January 2, 1929, between Pioche Mines

Exhibit "I"—(Continued)

Consolidated, Inc. and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $500,000., to be designated as Five Year Seven Per Cent. Convertible Debentures, which mature, as extended, on October 1, 1941; and

Trustee under Trust Agreement dated as of October 1, 1930, between Pioche Mines Consolidated, Inc. and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $1,000,000., to be designated as Convertible Seven Per Cent. Sinking Fund Gold Debentures, which mature, as extended, on October 1, 1941; because of defaults in the payment of instalments of interest on the Debentures of both of said issues, which defaults have continued for periods of over thirty days, and pursuant to the written request of the holders of more than 50% in aggregate principal amount of the Debentures now outstanding under each of said Trust Agreements, does hereby declare the principal amount of all of the Debentures now outstanding under each of said Trust Agreements to be due and payable immediately.

The undersigned has certified and delivered to Pioche Mines Consolidated, Inc., $476,300. aggregate principal amount in face value of Five Year Seven Per Cent. Convertible Debentures issued under Trust Agreement dated January 2, 1929, and $211,000. aggregate principal amount of Convertible Seven Per Cent. Sinking Fund Gold Debentures issued under

Exhibit "I"—(Continued)

Trust Agreement dated as of October 1, 1930, all of which are still outstanding and unpaid.

Interest on the Debentures dated as of January 2, 1929 was paid in cash down to and including December 31, 1930, interest on the Debentures dated as of October 1, 1930 was paid in cash down to and including March 31, 1931, and also for the six months' period ending September 30, 1937.

Coupons appertaining to the Debentures of both issues, commencing with the coupon payable January 1, 1931, down to and including the coupon due July 1, 1937, were exchanged for scrip, and thereby the maturity of the interest represented by the several coupons so exchanged was extended and, prior to this notice, was October 1, 1941, the extended date of maturity of the scrip. The Debentures of the two issues having been declared due and payable immediately by us, as Trustee, as hereinbefore set forth, the interest represented by the exchanged coupons and the scrip certificates has likewise become due and payable on the same date as the Debentures, as provided in the scrip certificates.

The coupons exchanged for scrip certificates are held as security for the scrip certificates issued in exchange, as provided in the scrip certificate, and are still outstanding and unpaid.

The undersigned, in accordance with the provisions of said two Trust Agreements, demands that Pioche Mines Consolidated, Inc. pay to it for the benefit of the holders of the Debentures and interest coupons now outstanding, the whole amount due and

Exhibit "I"—(Continued)

payable on all of such outstanding Debentures of both issues and the interest coupons appertaining thereto, with interest upon overdue instalments of interest at the rate of 7% per annum, to wit:

(a) on account of the outstanding Debentures dated as of January 2, 1929, and the coupons appertaining thereto, the sum of $476,300., with interest from January 1, 1931 to date of payment, with interest on overdue installments of interest at the rate of 7% per annum; and

(b) on account of the outstanding Debentures dated as of October 1, 1930, and the coupons appertaining thereto, the sum of $211,000., with interest from April 1, 1931 to April 1, 1937, and from October 1, 1937 to date of payment, with interest on overdue instalments of interest at the rate of 7% per annum;

and, in addition thereto, such further amounts as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee under said Trust Agreements.

Very truly yours,

FIDELITY-PHILADELPHIA
TRUST COMPANY,
Trustee,
By D. S. MATHERS,
Vice-President.

EXHIBIT "J"

PIOCHE DEBENTURE-HOLDERS' AGREEMENT, DATED AS OF FEB. 1, 1939

To Fidelity-Philadelphia Trust Company, Trustee under Trust Agreement dated as of January 2, 1929, between Pioche Mines Consolidated, Inc., and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $500,000., to be designated as Five Year Seven Per Cent. Convertible Debentures, which mature, as extended, on October 1, 1941 (hereinafter referred to as Debentures of '29);

Fidelity-Philadelphia Trust Company, Trustee under Trust Agreement dated as of October 1, 1930, between Pioche Mines Consolidated, Inc., and Fidelity-Philadelphia Trust Company, as Trustee, providing for the issue thereunder of debenture bonds of Pioche Company not exceeding the aggregate principal amount of $1,000,000., to be designated as Convertible Seven Per Cent. Sinking Fund Gold Debentures, which mature, as extended, on October 1, 1941 (hereinafter referred to as Debentures of '30).

The Fidelity-Philadelphia Trust Company is sometimes referred to in this Agreement as "Fidelity."

Pioche Mines Consolidated, Inc. (hereinafter called "Pioche Company") has paid the coupons appertaining to the Debentures issued under both of said Trust Agreements which matured down to and including April 1, 1931, and also the coupons which ma-

Exhibit "J"—(Continued)

tured on October 1, 1937, in cash, and has issued scrip in exchange for most of the coupons appertaining to said Debentures which matured from July 1, 1931 to July 1, 1937, inclusive, but a few coupons of a small aggregate principal amount which matured between said dates have not as yet been exchanged for scrip.

The coupons appertaining to the Debentures of '29 which matured on January 1 and July 1, 1938, and January 1, 1939, and to the Debentures of '30 which matured on April 1 and October 1, 1938, have not been exchanged for scrip or paid in cash, the period of thirty days' grace for the payment of interest provided for in the said Trust Agreements has expired as to the coupons payable on each of said dates, and said interest is now in default.

The scrip certificates issued in exchange for the coupons which matured from July 1, 1931 to July 1, 1937, inclusive, mature, as extended, on the same date at the Debentures, to wit, October 1, 1941, but provide (a) that in the event that either the Debentures of '29 or the Debentures of '30 shall be declared due and payable by the Fidelity under the aforesaid Trust Agreements, prior to the maturity date of the scrip, the scrip shall likewise become due and payable on the same date as the Debentures; and (b) that the coupons surrendered in exchange for scrip will be held as security for the scrip certificates issued in exchange, and that any questions arising as to the manner in which the coupons so held shall be used for the protection of the holders of the scrip issued in exchange for such coupons shall be decided by the holders of a majority in amount of such scrip.

Exhibit "J"—(Continued)

Each Debenture of '29 of the denomination of $1000, plus the interest accumulated thereon down to January 1, 1939, including scrip, overdue coupons not exchanged for scrip and interest on scrip and on such overdue coupons, amounts in round figures to $1703+.

Each Debenture of '30 of the denomination of $1000, plus the interest accumulated thereon down to January 1, 1939, including scrip, overdue coupons not exchanged for scrip and interest on scrip and on such overdue coupons, amounts in round figures to $1639+.

A written request addressed to the Fidelity-Philadelphia Trust Company, as Trustee under the aforesaid two Trust Agreements of even date herewith, and in the form, a copy of which is attached hereto, has been executed by the holders of 50 per cent of the aggregate principal amount of the Debentures of each of said issues, requesting Fidelity to declare the principal of all of the Debentures now outstanding under each of said Agreements to be due and payable immediately, and to demand of the Pioche Company payment of the whole amount due and payable on all of such outstanding Debentures and interest coupons, with interest on overdue instalments of interest and amounts necessary to cover costs and expenses of collection, as more particularly set out in said form of written request.

(A) We, the undersigned, holders of the amounts of Debentures outstanding under said Trust Agreements, set opposite our names respectively, constituting altogether more than 50 per cent in aggregate

Exhibit "J"—(Continued)

principal amount of the Debentures of each of said issues, request the Fidelity-Philadelphia Trust Company——

1. In case the Company shall fail to pay the amounts due, as above stated, forthwith upon demand, to institute such action or actions, proceeding or proceedings at law or in equity as may be advised by counsel for the protection of the debenture-holders and the collection of the sums so due and unpaid, all as provided in each of said two Trust Agreements.

Suits shall not be brought until the Committee hereinafter named shall have a reasonable time within which to negotiate an arrangement or settlement as hereinafter provided for.

2. To loan to the Committee hereinafter named such amounts as shall be called for by the Committee from time to time for the purpose of paying the expenses to be incurred in carrying out the said Trust Agreements and this Agreement, but not more than the amounts hereinafter provided for in Article F of this Agreement.

3. To do or perform any other matters or things as requested by the Committee, or a majority of the debenture-holders, within the powers hereinafter conferred upon them, and not inconsistent with the provisions of the aforesaid Trust Agreements, or either of them.

(B) The undersigned holders of Debentures agree to deposit the amounts of Debentures set opposite their names respectively, together with such scrip appertaining thereto as they respectively own or control, with Fidelity, as security for the amounts to be

Exhibit "J"—(Continued)

loaned to the Committee, as provided in Paragraph 2 above. The Debentures deposited shall have the coupons due January 1, 1938, and all subsequent coupons attached. Holders of scrip who do not own the Debentures to which such scrip appertains may also deposit their scrip hereunder and sign this Agreement. The scrip certificates deposited shall be in negotiable form. Upon the repayment of any amounts loaned by Fidelity, subject to the rights conferred upon the holders of Debentures, scrip and coupons with respect to amounts advanced by them, as provided in Article G of this Agreement, Fidelity shall continue to hold the Debentures, scrip and coupons deposited, subject to the order of the Committee.

(C) When the Debentures outstanding of each of said issues shall have been declared due and payable immediately, the undersigned debenture-holders (in their capacity as holders of a majority of the outstanding scrip and pursuant to the authority conferred on such majority by the scrip certificates as above set forth) agree to direct that all of the coupons held as security for the scrip certificates shall be delivered to Fidelity. As scrap certificates are deposited with the Fidelity, the coupons in exchange for which they were respectively issued shall be held for the protection of such deposited scrip certificates and shall be pledged with said certificates as above provided. The other coupons in exchange for which undeposited scrip certificates were issued shall be held for the protection of such undeposited scrip certificates, but shall not be surrendered or cancelled by Fidelity except in connection with the payment

Exhibit "J"—(Continued)

or settlement of the claims of the holders of all of the Debentures, scrip and coupons.

(D) Messrs. Percy H. Clark, Albert P. Gerhard, Robert F. Holden and John E. Zimmermann are hereby named a Committee (herein referred to as "Debenture-holders' Committee") for the purpose of carrying out the terms of this Agreement. The members of the Committee shall serve without compensation.

The Committee shall have the following powers:

1. To determine when to deliver the written request in the form attached hereto to Fidelity.

2. To determine the time for the performance of each one or all of the actions provided for herein, including particularly the time when suit shall be instituted, as provided for in Article A, Paragraph 1.

3. To negotiate with the Pioche Company, its creditors, stockholders and others interested, an arrangement in the nature of a reorganization or settlement for the purpose of avoiding or terminating litigation and such arrangement or settlement so negotiated shall be binding on the holders of Debentures and scrip (or overdue coupons) who shall have signed this Agreement or deposited their Debentures and scrip (or overdue coupons) hereunder, when approved by the holders of a majority of the aggregate principal amount of the outstanding Debentures.

The term "outstanding Debentures" as used in this Agreement shall include all Debentures certified by the Fidelity and delivered to the Company which

Exhibit "J"—(Continued)

shall not have been returned to the Fidelity for cancellation.

4. To determine all details relating to the carrying out of this Agreement and any arrangement or settlement negotiated as above provided or involved in the collection, by litigation or otherwise, of the sums so due and payable. In the event that judgment is secured against the Company, the Committee shall have authority to decide all matters arising in connection with the execution and satisfaction of the judgment and the sale, public or private, of the assets and properties subject thereto, including the time and place of any such sale or sales, or adjournments thereof, the amount to be bid for the assets and properties at any such sale, and other such matters.

5. To employ counsel to advise the Committee and the debenture-holders in any and all matters arising under this Agreement and the aforesaid Trust Agreements, including any arrangement or settlement or proceeding for the collection of the sums due and payable to the holders of Debentures, scrip and coupons. Said attorneys shall be entitled to reasonable compensation for all services rendered, to be provided for in any such arrangement, or settlement, or out of any amounts collected on account of the sums due and unpaid, as above, and in any event the Committee shall have authority to approve, on behalf of the holders of Debentures and scrip who have signed this Agreement or deposited hereunder, the amount of such compensation and the manner in which it shall be paid.

Exhibit "J"—(Continued)

6. To employ accountants, engineers, clerks and other assistants, as the Committee may determine, and fix their reasonable compensation, and such charges and the expenses of those so employed shall be considered as part of the Debenture-holders' Committee's expenses, and the committee may make such other expenditures as in its discretion it may deem advisable and proper in order to carry out fully and effectively the purposes of the Trust Agreements and this Debenture-holders' Agreement.

7. To borrow money from time to time from the Fidelity, or others, for the purpose of paying the expenses incurred in carrying out said Trust Agreements and this Agreement, but not in excess of the amounts hereinafter in Article F provided for. The funds so borrowed may be used by the Committee for expenses incurred by the Fidelity, the Committee, and by the attorneys and others duly authorized by the Committee, including traveling expenses, but shall not be applied to the payment of attorneys' fees, or other fees for services of any kind, except as provided in Paragraph 6 of this Article D, provided, however, that if it becomes necessary to engage a local attorney or attorneys in the district where suit is brought, the committee may pay a retainer or reasonable fees of such attorney or attorneys out of the monies so borrowed, with the approval of the Fidelity.

8. To increase the number of the Committee to five by the appointment of an additional member who

Exhibit "J"—(Continued)

shall be a debenture-holder or represent one or more debenture-holders.

9. Any further and additional powers which may reasonably assist in the accomplishment of the purposes of this instrument.

A majority of the Committee shall have power to act for the whole Committee, and any written request or direction addressed to the Fidelity, or to any other party, signed by a majority of the Committee, shall constitute action by the Committee and shall be binding on all of the members of the Committee, and if authorized by this Agreement, upon the undersigned debenture-holders.

(E) The holders of a majority in aggregate principal amount of the outstanding Debentures shall have the right at any time, by an instrument in writing executed and delivered to the Fidelity, to approve of any arrangement in the nature of a reorganization or any settlement, and to direct the termination of litigation, if litigation shall have been theretofore instituted, and to decide all matters arising in the course of carrying out this Agreement, or any such arrangement or settlement or litigation for the collection of the sums so due and unpaid, which may be considered to come outside the authority of the Committee, and any action of such a majority shall be binding on all of the holders of Debentures and scrip (or overdue coupons) who shall have signed this Agreement, or whose securities shall be deposited hereunder.

Exhibit "J"—(Continued)

(F) Amounts actually disbursed by the Fidelity and the Committee in the execution of the Trust Agreements and this Agreement shall be paid (or reimbursed) out of the funds borrowed by the Committee under the authority conferred by Article D, Paragraph 7, but no fees shall be paid out of said fund, excepting as provided in said Paragraph 7.

The power of the Committee to borrow for the purposes stated shall be subject to the following limitations:

1. The Committee shall not borrow amounts aggregating more than $5000. unless action shall be instituted under advice of counsel, as provided in Article A, Paragraph 1.

2. In the event that action shall be instituted, as provided in Article A, Paragraph 1, the Committee shall have authority to borrow up to but not exceeding the aggregate amount of $17,500.

(G) Each of the undersigned holders of Debentures within the limit set in this paragraph, hereby agrees to repay to the Fidelity on demand the amount loaned by the Fidelity to the Committee, together with interest, and each of them (within the limit stated) further agrees to indemnify the Fidelity against any expense or liability incurred by it in carrying out the terms of the said Trust Agreements and this Agreement. The liability of each debenture-holder under this Article G shall be limited to 2½% of the amount of principal, plus accumulations of interest owing to such debenture-holders respectively, as of January 1, 1939.

All monies advanced by holders of Debentures and

Exhibit "J"—(Continued)

scrip under this Article G shall be repaid in full before any distribution is made to holders of Debentures, scrip or coupons, of securities or funds recovered through litigation, or any such arrangement or settlement, and the holders of Debentures who make payments to the Fidelity under this Article G shall have a claim to the extent of the amounts paid by them respectively against the Debentures, scrip and coupons deposited, and any such funds or securities, subject only to the claims of the Fidelity.

Any one who shall advance more than his or her proper proportion of the amounts due and payable under this Article G shall have a claim for the excess against those who have not paid their full proportion, and for that purpose shall be subrogated to the claims of the Fidelity under this Article G.

(H) Any member of the Debenture-holders' Committee may resign by giving appropriate notice of his resignation in writing to the other members of the Committee. In case any vacancy in the membership of the Committee shall occur by reason of death, resignation or otherwise, such vacancy may be filled by a majority vote of the remaining members of the Committee, such choice being made from among the holders of outstanding Debentures.

(I) Neither the Debenture-holders' Committee nor any of its members shall, on account of any action of the Committee, incur any liability for the carrying out of this Agreement, or any part thereof,

Exhibit "J"—(Continued)

nor for the result of any steps taken or acts done by them respectively, for the purposes thereof, but this clause shall not be construed to relieve them, as debenture-holders signing this Agreement, from the obligations assumed by such debenture-holders. The Debenture-holders' Committee, however, undertakes in good faith to carry out the provisions of this Agreement. Neither the Debenture-holders' Committee, nor any member thereof, shall be personally liable for any act or omission of any agent or employee selected in good faith, nor for any error in judgment or mistake of law, nor in any case except for his, its or their own individual, wilful malfeasance.

(J) All monies received by the Debenture-holders' Committee may be deposited by it with any bank, bankers or trust company, to the credit of said Committee, subject to application by it for any of the purposes of this Agreement, as it may from time to time determine, and its determination as to the propriety and purposes of any such application shall be final. Any such monies shall be paid out on the written order of the Debenture-holders' Committee, acting through any agent or agents that may be appointed, by an instrument in writing signed by a majority of the Committee.

(K) The methods to be adopted in carrying out this Agreement shall be entirely discretionary with the Debenture-holders' Committee and this Agreement shall be liberally construed so as to enable the Committee to carry into effect the purposes thereof.

Exhibit "J"—(Continued)

Anything which anywhere in this Agreement the Debenture-holders' Committee is authorized to do, or allow to be done, it may do or allow to be done by or through such agent or agencies as in its discretion it may determine, or by or through others under contracts therefor with any person, firm, corporation or committee. It may supply any defect or omission, or reconcile any inconsistency in this Agreement in such manner and to such extent as it shall deem expedient to carry out the same effectively, and it shall be the sole and final judge of such expedience.

(L) This Agreement shall be construed strictly as an agreement between the parties and as solely affecting and relating to the Debenture-holders' Committee and the holders of Debentures, scrip and coupons who sign this Agreement or deposit hereunder, and the Debenture-holders' Committee and the debenture-holders who sign or deposit hereunder and no other person, firm or corporation shall have any rights whatever under this Agreement, or by reason of anything done or omitted hereunder.

(M) This Debenture-holders' Agreement shall bind and benefit the several parties, including those who deposit their securities hereunder, their and each of their heirs, executors, administrators, successors and assigns.

(N) This Agreement shall not be binding until signed by the holders of a majority of the outstanding Debentures of '29 and of the Debentures of '30.

Exhibit "J"—(Continued)

This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

Name of Debenture-Holders	Debentures of '29	Debentures of '30
.....	.....	.....
.....	.....	.....
.....	.....	.....

EXHIBIT "K"

Declaration of Trust

I, John Janney, of Pioche, Nevada, having acquired the controlling interest in the outstanding capital stock of the Nevada Volcano Mines Company, a Nevada Corporation, organized in 1908, with a total capital stock of one million shares of the par value of $1.00 per share; and having acquired options on the remainder of the Capital Stock of this Company, hereby declare myself as the holder of the title to all stock acquired, and to be acquired by me in the said Company, in trust for the benefit of myself and all of those certain hereinafter designated shareholders of the Pioche Mines Company, in proportion to their holdings in the said Pioche Mines Company, under the provisions of the following Declaration in Trust.

Whereas, the Nevada Volcano Mines Company is the owner of valuable mining properties at Pioche, Nevada, comprising eleven lode mining claims, from which leasers have in recent months produced in excess of $100,000.00 of high-grade shipping ore and

Exhibit "K"—(Continued)

have exposed to view a considerable tonnage of milling ore, and

Whereas, I have deemed it advisable to acquire the control of this property in order to prevent two rival companies from becoming active in this locality, competing with each other in the purchase of water rights, location sites, terminal facilities and other milling facilities.

Whereas, the Pioche Mines Company has no funds in its treasury with which to purchase new properties, all funds having been subscribed for the purpose of equipment and operation.

Whereas, I am able of my own resources, together with the assistance of certain members of the original Exploration Syndicate, which formed the Pioche Mines Company, to acquire control of this property without drawing on any of the funds of the Pioche Mines Company.

Whereas, I am, nevertheless, desirous of turning over this property, free of any charge or cost whatsoever, to such of the stockholders of the Pioche Mines Company as wish to share in the benefits and burdens of the operation thereof.

Whereas, I am fully alive to the fact that a corporation may be possessed of too much land and may be hurt rather than benefitted by the donation of property unless the corporation has the ability to carry the burden of the operation and development of said property, which in this case would require either an increase in the Capital Stock or else a trust such as is hereby created.

Exhibit "K"—(Continued)

Whereas, it is possible by a Declaration in Trust to convey to those shareholders who wish to share in the benefits of this property a proportionate burden in its development and thus free the corporation as a whole from any burdens incident to its development by having this burden borne proportionately and equitably by the different shareholders who participate therein, leaving all the other shareholders of the Pioche Mines Company free to hold their original stock intact, without any change whatever, either as to benefits or burdens.

Now, Therefore, this Declaration in Trust Witnesseth,

That I, John Janney, am the owner and holder and do hereby and forever hereafter hold in trust, all title, rights and interest acquired by me in the Nevada Volcano Mines Company, for the benefit of:

First: All those stockholders of the Pioche Mines Company who have acquired shares by purchase from the financing organization since the date of June 18th, 1920, which shall include all those stockholders who purchased shares from the Shareholders Committees at the price of $2.50, $3.00, $4.00 and $5.00 per share, and all those who may later acquire stock from the stockholders financing organizations at any higher price.

Second: All those stockholders of the Pioche Mines Company who have acquired shares by purchase from the financing organizations at previous date and at lower price who will deposit their shares in escrow under pooling agreement to be hereafter

Exhibit "K"—(Continued)

determined as to time and place, and who will also lend their co-operation to the Shareholders Committees at their respective localities, and assist in such reasonable ways as may be possible in the efforts of the Committees to make a success of its business of providing funds from the sale of such securities as are to be sold for the purpose of completing the equipment and carrying on the operations on the properties herein, to the point of paying dividends; and who will also contribute their pro-rata share towards the equipment and development of the said Volcano property, as follows, to-wit:

(a) Those who have purchased treasury shares at less than $1.00 per share shall return to the Syndicate Fifty Per Cent (50%) of their holdings to be resold for the purpose of providing such an operating fund; the terms and conditions as to the details of said arrangement to be mutually agreed to among the said stockholders and approved by myself.

(b) Those who have purchased shares at $1.00 per share or more, and less than $2.50 per share shall re-sell to the development fund for the same price they paid, plus interest to date, at the rate of Six Per Cent (6%) per annum, Fifty Per Cent (50%) of their holdings, same to be resold by the Committees to provide additional capital, provided such additional capital shall be needed. It being understood that the stockholders who have purchased shares at $1.00 per share or more but under $2.50 per share shall not be called upon unless such contribution is needed to avoid the Company from issu-

Exhibit "K"—(Continued)

ing bonds or increasing its Capital stock, or unless they are unable to render a personal service to offset their proper share of contribution.

(c) Those who hold shares from the original Syndicate and who are devoting their entire time to the services of their Company without compensation from said Company therefor. All other holders of Syndicate shares who have paid less than $1.00 per share shall pay sufficient additional money to make the total payment $1.00 per share, and also shall return Fifty Per Cent (50%) of said shares to provide operating funds.

Provided, However, that any stockholder of the Pioche Mines Company shall automatically forfeit all his interest in this Trust who shall do any act in flagrant violation of the interest of the Company as a whole, or attempt to advance his personal or selfish interests in such a way as to obstruct or oppose the general good of the Company in its lawful, legitimate progress towards the point of successful operations of its ores and the payment of dividends.

Provided, Further, that it is in no way obligatory on any stockholder to comply with the provisions of this Trust unless he wishes to bring himself within the benefits of its provisions and every stockholder within the Pioche Mines Company has a full right and option of refusing to in any way participate in this Trust and he will in no way be deprived of any benefits or property belonging to him as a stockholder in said Company, as fully set forth and provided in the Articles of Incorporation thereof.

Exhibit "K"—(Continued)

Provided, Also, that all stockholders wishing to accept the provisions of this trust shall give notice in writing of their intention so to do within twenty-four months from this date, addressed to me, John Janney, at Pioche, Nevada. Within twelve months thereafter a trust certificate will be duly issued to each shareholder who has qualified under the provisions of this Trust and who therefore has shown himself to be entitled to receive same. (Time extended at request of annual stockholders meeting of January, 1925, subject to slight modification of clause "b".)

In Testimony Whereof, I hereunto subscribe my signature and seal. Done at Pioche, in the State of Nevada, this 15th day of July 1920.

[Seal] /s/ JOHN JANNEY

Witness: /s/ W. W. GRUBBS

(Copy)

AMENDED VOLCANO MINES COMPANY DECLARATION IN TRUST

Whereas, certain stockholders of the Pioche Mines Company have not availed themselves of the privileges granted them under that certain Declaration in Trust, dated the 15th day of July, 1920, and

Whereas, at the annual meeting of stockholders held in Pioche, Nevada, on January 22nd, 1925, a Special Committee was appointed for the purpose of securing from the Exploration Syndicate a renewal of the offer to stockholders enabling them to par-

Exhibit "K"—(Continued)

ticipate in the Nevada Volcano Mines Company, which right expired by limitation of time on the 15th day of July, 1922.

Now, Therefore, I, John Janney of Pioche, Nevada, having acquired the outstanding issued stock of the Nevada Volcano Mines Company (less about 2%), do hereby declare myself as the holder of the title to all stock acquired by me in said Company in Trust for the benefit of myself and all of those certain hereinafter designated stockholders in the Pioche Mines Company in proportion to their holdings in the said Pioche Mines Company, share for share, who shall pool their shares as required in former Declaration in Trust, and who shall conform to the provisions and requirements hereinafter set forth, namely:

(a) Shareholders who purchased at $1.00 per share may have for twenty-four months from this date the privilege of surrendering to the Exploration Syndicate Thirty (30) Percent of their holdings.

(b) Shareholders who purchased at $1.50 per share may likewise have the privilege of surrendering Twenty (20) Percent of their holdings.

(c) Shareholders who purchased shares at less than $1.00 per share may likewise have the privilege of surrendering Fifty (50) Percent of their holdings.

(d) All those shareholders who have qualified under provisions of previous Declaration in Trust, dated July 15th, 1920.

Shares so surrendered to be in payment for the

Exhibit "K"—(Continued)

same relative interest in the Nevada Volcano Mines Company as the remaining shares held by them shall represent in the Pioche Mines Company, which is to say that their relative interest shall be the same in each Company.

Shares so surrendered to the Exploration Syndicate to be used by them as they shall deem expedient and proper to defray expenses and discharge the obligations of the said Exploration Syndicate in their work for and in their advances to the Pioche Mines Company.

Provided, However, that any stockholder of the Pioche Mines Company shall automatically forfeit all his interest in this Trust who shall do any act in flagrant violation of the interests of the Company as a whole, or attempt to advance his personal or selfish interests in such a way as to obstruct or oppose the general good of the Company in its lawful, legitimate progress towards the point of the successful operations of its ore and the payment of dividends.

Provided, Further, that it is in no way obligatory on any stockholder to comply with the provisions of this Trust unless he wishes to bring himself within the benefits of its provisions, and every stockholder within the Pioche Mines Company has a full right and option of refusing to in any way participate in this Trust, and he will in no way be deprived of any benefits or property belonging to him as a stockholder in said Company, as fully set forth and provided in the Articles of Incorporation thereof.

Exhibit "K"—(Continued)

Provided, Also, that all stockholders who wish to accept the provisions of this Trust shall give notice in writing of their intention so to do within twenty-four months from this date, addressed to me, John Janney, at Pioche, Nevada. Within twelve months thereafter a trust certificate will be duly issued to each shareholder who has qualified under the provisions of this Trust, and who, therefore, has shown himself to be entitled to receive same.

In Testimony Whereof, I hereunto subscribe my signature and seal.

Done at Pioche, in the State of Nevada, this 24th day of February, 1925.

[Seal] .....

Witness:

.....

[Endorsed]: Filed January 29, 1940.

[Title of District Court and Cause.]

DEFENDANTS' AMENDED ANSWER

* * * John Janney is a stockholder of Pioche Consolidated; admit that John Janney held offices in Pioche Consolidated and in Pioche Mines Company, and in Nevada Volcano Mines Company, and was a member of the Exploration Syndicate, as alleged in said paragraph; allege that John Janney and the group of stockholders known as the Exploration Syndicate are a non-profit group associated together

for the purpose of protecting the interests of all stockholders of the Pioche companies; allege that defendant John Janney has served in the aforesaid capacities without salary or any other compensation and has personally defrayed his own expenses in the furtherance of the Companies' business; deny that defendant John Janney controls the boards of directors of Pioche Consolidated and its two subsidiaries above named and allege that his sole powers are those which are provided by law for his position as stockholder, director and officer of the companies;

* * * the Exploration Syndicate originally acquired an option on a certain group of claims known as the Bingham Group, which is now a part of the West End Group of claims, and allege that at the time of the building in of the railroad to Pioche, said Exploration Syndicate conveyed to Pioche Mines Company this option subject to the payment of $14,000 remaining due under the said option and allege that immediately thereafter the Pioche Mines Company acquired a quitclaim deed from Bingham and his associates to properties known as the Bingham Group of claims upon making to the owners an additional part payment, and that subsequently full title was acquired by letters patent from the Government of the United States under Mineral Survey No. 4160; admit that the Exploration Syndicate acquired other mining rights which are now included in the group known as the West End Group of claims, and later, the Wide Awake Mine and a controlling interest in the stock of the Nevada Volcano Mines

Company and allege that the West End Group of claims was conveyed to Pioche Mines Company without further compensation, that the rights acquired in the Wide Awake Mine were conveyed to Pioche Mines Company for One Dollar consideration, and that the stock interest in the Nevada Volcano Mines Company was placed in trust for the stockholders of Pioche Mines Company under the provisions of a trust agreement known as the Volcano Trust, a copy of which is annexed as Exhibit "K" to the complaint; admit that the Exploration Syndicate acquired the properties known as the Poorman Mine, Nevada-Des Moines group, the Toledo-Pioche group of mining claims, the lease of the Early Day Mines from Amalgamated Pioche Mines and Smelters Corporation and the Aerial Tramway connecting the mines with the mill, together with a 49% interest in the mill, and allege that all of these properties were conveyed to Pioche Mines Consolidated by the Exploration Syndicate in consideration of stock in the Consolidated Company, and allege that the stock payment received for Toledo-Pioche group of mining claims was afterwards placed in trust for the benefit of the Pioche Mines Consolidated; admit that the Gold Crown group of claims was acquired by the Exploration Syndicate, and allege that this property was subsequently conveyed to Pioche Mines Consolidated in consideration of the offer made to the stockholders of the Pioche Mines Company for the exchange of their shares on a share for share basis for shares of Pioche Mines Consolidated; admit that a controlling beneficial interest in the capital stock

of Nevada Volcano Mines Company was acquired by the Exploration Syndicate, and allege that title to this stock interest was acquired by John Janney on behalf of said Exploration Syndicate and allege that said stock was subsequently placed in trust for the benefit of the stockholders of the Pioche Mines Company pursuant to a declaration of trust recorded in the minutes of Pioche Mines Company, and allege that a copy of said declaration of trust was sent to the heads of the organized shareholders' groups in each locality where shareholders' groups were organized, and that subsequently a printed copy of said declaration of trust was mailed to all of the stockholders of defendant Pioche Mines Company;

* * * in December, 1928 a consolidation plan was agreed upon by parties representing the Mines Company, the Exploration Syndicate and others, and allege that these others were Percy H. Clark, John E. Zimmermann and R. T. Naylor; admit that this consolidation agreement provided for (a) the incorporation of a new company to be called Pioche Mines Consolidated, Inc. with an authorized capital stock of 2,500,000 shares of the par value of $5 each; (b) the issue of 1,000,000 shares of said stock for the purchase of the properties and claims of the Exploration Syndicate but deny that these properties included any claim of the Syndicate for $380,826.94 or for any sum of money against the Mines Company, and allege that said alleged claim for $380,826.94 was extinguished at the time of the consolidation; (c) the setting aside of 1,000,000 shares of stock to be offered to Pioche Mines Company stockholders in ex-

change for their stock and the attendant interest in the Nevada Volcano Mines Company which accrued under the Volcano trust, and allege that the exchange was to be subject to arrangements authorized by the Board of Directors of the Pioche Mines Company and subject to the approval by the Board of Directors of Pioche Mines Consolidated and allege that such arrangements provided for the pooling of all shares of those stockholders of the Pioche Mines Company who had purchased shares at a price lower than $4 per share provided that upon payment of a third dividend upon the stock of Pioche Mines Consolidated, the shares of Pioche Mines Consolidated were then to be delivered to Pioche Mines Company stockholders; (d) the balance of the authorized capital stock amounting to 500,000 shares was to be held for conversion in debentures and for future financing and allege that for the purpose of carrying out this plan of consolidation it was agreed by and between the above named parties that the Board of Directors of Pioche Mines Company should recommend to the stockholders of Pioche Mines Company the exchange of shares contemplated in the plan of consolidation and it was agreed by the aforesaid Percy H. Clark and John E. Zimmermann that they would cooperate and work with the Company in the event that it should encounter unexpected difficulties in the conduct of its affairs, and it was agreed that said Percy H. Clark would act as counsel of the said Company and that he would cooperate with the management in the legal and financial departments of the Company's business and it was agreed that the afore-

said John E. Zimmermann would serve as a member of the Board of Directors of the new Consolidated Company and perform the duties and obligations incident thereto.

Admit that in accordance with the consolidation agreement Pioche Mines Consolidated was duly incorporated and allege that the action described in the first two sentences of the second paragraph of paragraph numbered VI of the complaint and also the membership of the Board of Directors were known and agreed to by the parties to the consolidation agreement; admit that the holders of 85% of the outstanding shares of stock of Pioche Mines Company surrendered their stock in exchange for stock of Pioche Mines Consolidated and allege that said stock was surrendered and endorsed in favor of Pioche Mines Consolidated and that an equal number of shares of Pioche Mines Consolidated were issued in their name and place in a pool and that pool certificates were thereupon issued to said stockholders pursuant to an agreement set forth upon the face of said pool certificates, and allege that this exchange was accomplished pursuant to the recommendation of the officers of Pioche Mines Company made in reliance upon the agreement of Percy H. Clark and John E. Zimmermann as previously set forth in this paragraph; admit that debentures of 1929 to the amount of $419,600 were sold pursuant to the consolidation agreement and were paid for in cash at par but deny that the proceeds were sufficient to develop the mines and purchase the necessary equipment therefor.

* * * Deny that defendant Janney controls and

has at all times since the incorporation of Pioche Consolidated controlled the Board of Directors of Pioche Mines Company and allege that the only powers exercised by John Janney in respect to said Company and its Board of Directors are the powers which he exercises as provided by law for a stockholder, director and officer of such Company; deny that Messrs. Milner and Ferry had invested no funds in the Pioche enterprise and allege that as members of the Exploration Syndicate they were interested in the distribution of shares paid for property sold to the Company by the said Exploration Syndicate and allege furthermore that said Milner and Ferry were elected members of the Boards of Directors of Pioche Mines Company and of Pioche Mines Consolidated because they had invested heavily of their time and because of the value of their experience and knowledge of mining affairs which they had acquired as directors and managers of leading mining companies; allege further that Messrs. Milner and Ferry received no salaries for their services from the Company nor did they receive their expenses in the conduct of the Company's affairs and that they gave a very considerable amount of time to the Company's affairs making extended visits to the mines, examinations of the properties and attending meetings throughout the country for the transaction of Company business; admit the other allegations except as herein denied contained in the first paragraph of said paragraph numbered VII of the complaint.

Deny that at any time the defendant Janney has had absolute control over the corporate organiza-

tion affairs and properties of Pioche Mines Consolidated, Inc. or of its two subsidiaries Pioche Mines Company and Nevada Volcano Mines Company and deny that the boards of directors of any of said companies have perpetuated themselves by filling vacancies from time to time by the election of parties under the control of defendant Janney and allege that the only powers exercised by defendant Janney or by said boards of directors are such as are provided by law for boards of directors of corporations and for the stockholders and officers thereof; admit that no formal meeting of the stockholders of Pioche Mines Consolidated or of Pioche Mines Company since the incorporation of Pioche Mines Consolidated has ever been called or held but allege that no request or demand for such stockholders' meeting has ever been advanced by any stockholder in either Company, that no request or formal demand was ever made by Percy H. Clark at any time during the long period of years in which he acted as counsel for the Consolidated Company that such stockholders' meeting be called and defendants respectfully refer to the further explanation thereof which appears in paragraph 12-k of this amended answer; allege furthermore that frequent and informal meetings have been held of the principal stockholders, and contact has been maintained with the heads of the various local stockholders' organizations; admit that defendant Janney holds under the Volcano trust shares of stock in the Nevada Volcano Mines Company and allege that defendant Janney acquired this stock at his own expense and placed the same in trust for

the benefit of stockholders of Pioche Mines Company and has since held said stock in trust under the provisions of said declaration of trust known as the Volcano Trust and that said stock of Nevada Volcano Mines Company has been kept in a safe deposit vault in the Utah Savings & Trust Company, Salt Lake City, Utah, in an envelope designating it to be held in escrow for Pioche Mines Company together with a copy of the declaration of trust under which such shares are held;

* * * the mining and milling operations of Pioche Consolidated were brought to an abrupt close in September, 1929 when the mill was partly destroyed by fire, but deny that the other activities of the company ceased and allege that the plans for reconstruction and refinancing were immediately undertaken and actively pursued, and that the mill building was reconstructed, that mining and milling operations were later resumed; allege that any inability to adequately finance the Pioche Consolidated enterprise resulted from the refusal of Percy H. Clark and John E. Zimmermann to carry out their undertakings made at the time of the consolidation agreement, and from their interference as more particularly set forth in the affirmative defenses herein; admit that in 1933 the Daly East Gold Vein located on the Toledo-Pioche group of claims was opened and the shipments of ores from this development were made.

Admit that efforts were made from time to time to raise funds first by the sale of convertible Debentures of '30, and later by borrowing on open book account and on notes and by sales of stock; admit that the mill building was reconstructed after the sale of the

Debentures of '30; and admit that it has never been equipped to operate on a commercial basis and allege that this was because of the average grades of ore then available and further allege that other grades of ore which would have permitted such profitable operation would have been available if the development program had not been interfered with; admit that a number of small subscriptions to the capital stock have been received and that Pioche Consolidated has borrowed very substantial sums from time to time, and allege that information as to the exact amounts borrowed has been available to plaintiffs; deny that funds acquired by the Pioche Enterprise were absorbed by the maintenance of an organization in Pioche and allege that such funds have been used for the purpose of carrying on the necessary business and maintaining the properties of the Pioche enterprises including the acquisition of additional equipment and the improvement of the Pioche properties; deny that Pioche Consolidated has been financed by the "method of hand to mouth financing" except when such financing was forced upon the Company by the activities of said Clark and his associates, as more fully alleged in the affirmative defense herein; deny that the operations of the Pioche enterprise have been conducted at any excessive loss but admit that the return from the experimental work heretofore conducted has, as is usual in such cases, been less than the cost thereof, and allege that the conduct of the Consolidated enterprise at a loss to date is the direct result of the actions of said Clark and his associates, as more fully set forth in the affirmative defenses herein, which said activi-

ties have prevented the adequate financing of Pioche Consolidated and consequently have prevented the operation of Pioche Consolidated on a large enough tonnage basis to enable that Company to operate at a profit; deny that Pioche Consolidated is insolvent and allege that any suspension of business of said Pioche Consolidated for want of funds to carry on the same is entirely the result of the acts and conduct of said Clark and his associates as is more fully alleged in the affirmative defenses herein;

* * * Pioche Consolidated addressed a letter to the debenture holders asking them to sign a Reorganization Agreement, and admit that the contents of said letter and the terms and inducements offered under said Reorganization Agreement are as set forth in the copies of said letter, Reorganization Agreement and Plan of Reorganization enclosed therewith (annexed hereto as Exhibit A), and defendants particularly deny the characterizations in the complaint that the debenture holders were required to make any sacrifice or concession or that any terms or provisions of said Plan of Reorganization were not fully disclosed therein, and allege that all terms of said Agreement and Plan were arrived at by mutual agreement between representatives of the parties in interest and that said debenture holders demanded and obtained adequate consideration in return for all their so-called concessions; deny knowledge or information sufficient to form a belief as to the allegation that some of the debenture holders were unwilling to sign the Reorganization Agreement; admit that the Agreement was not signed by the holders of the

requisite number of debentures to make it binding according to its terms and that the plan never became operative, and allege that the failure to obtain a sufficient number of signatures to make the Plan of Reorganization and Agreement thereunder operative was entirely due to the refusal and failure of said Clark and Zimmermann to fulfill an agreement entered into by them to use their best efforts to obtain signatures to the plan; allege furthermore that said Clark and Zimmermann did not use their best efforts to secure signatures as agreed but on the contrary worked to defeat the plan and discourage the new money.

* * * there were discussions in April and May, 1939 relative to the avoidance of litigation and the recapitalization of the Company and allege that negotiations looking toward this end were postponed pending an audit and examination of legal titles requested by the said Committee of Debenture Holders, and that after receipt of said audit and examination no further negotiation as contemplated under the aforesaid agreement of February 1, 1939 was arranged by said Clark and his associates; admit that defendant John Janney agreed to an audit of accounts and for an examination of legal titles as alleged and that defendant John Janney went to Pioche on or about June 23, 1939; and allege that said audit, so far as these defendants are concerned, was made as quickly as was possible under the then existing circumstances; deny that the reports disclosed gross mismanagement and waste and deny that John Janney failed to make a full disclosure of material facts as requested by the Debenture Holders' Committee

and failed to cooperate with them in other respects.
* * * * *

Defendants allege that Percy H. Clark proposed the said consolidation and he then and there agreed that if the consolidation was made in accordance and the bond issue which he proposed was authorized and sold to himself and his clients, that he would become responsible for the legal matters connected with the Company's affairs and that the details connected with or arising out of the consolidation proposed would rest entirely upon his shoulders, that he would assume entire responsibility therefor and leave the time and energy of the management of the Pioche Mine Consolidated to be devoted to engineering and operating problems; and that Percy H. Clark has since used his position as attorney for the Company to obstruct the Company's progress, to interfere with its plans and to set traps for its officials, in relation to legal matters involved in the Company's affairs, for the purpose of obstructing the defendant Consolidated Company.

* * * defendant Consolidated Company has never been advised by its attorney, Percy H. Clark, to issue the certificates of 850,000 shares, representing the ownership of the Pioche Mines Consolidated in the stock of the Pioche Mines Company but, on the contrary, he has advised that a double transfer tax will be required to be paid upon the said certificates and has never furnished defendant Consolidated Company satisfactory evidence of the soundness of this legal opinion which has been questioned by the defendant Consolidated Company, based on contrary

advice received from other sources; allege that shareholders of the Pioche Mines Company who had previously purchased shares for less than $4.00 per share received pool receipts, their stock certificates being held in pool until the third dividend shall have been paid by Pioche Mines Consolidated, in accordance with resolution of the Board of Directors; allege that the failure of John E. Zimmermann to serve as Director, as agreed, and the actions of Percy H. Clark heretofore set forth in this answer, which have thwarted the Company's financing plan and have obstructed its progress toward profits and dividends, have made payment of said three dividends so remote as to constitute the basis for the said Pioche Mines Company stockholders calling for the return of their shares, because of the violations of agreements and because of the fraud following from interferences aforesaid, and allege that such right, of the Pioche Mines Company stockholders, has existed ever since the said Percy H. Clark and John E. Zimmermann, having obstructed the Company financing, failed and refused to carry through the plan of January 24, 1938, as agreed and particularly since the said Percy H. Clark has declared a default on the bonds and instituted action against the said Company, in violation of his agreements and obligations and to the great damage of stockholders of said Pioche Mines Company.

* * * John Janney alleges that the Volcano Trust could not legally be dissolved by unilateral action on the part of the trustee, that he was improperly advised by Percy H. Clark as counsel for the Pioche

Consolidated at the time of the first meeting of the incorporators of said company to sign a paper agreeing to dissolve said Volcano Trust, that he signed said paper but that said paper did not legally dissolve said trust for the reason that the beneficiaries of the Trust did not give their consent thereto; defendants herein allege that never before the initiation of this action did Percy H. Clark, as representative of Debenture Holders or as attorney for the plaintiffs or at all, ever bring to the attention of the defendants or Pioche Mines Consolidated or its board of directors that such a dissolution of the Volcano Trust was legal or could be made.

Defendants deny that the provision in the Volcano Trust for trust certificates to be issued, had application to subsequent shareholders but it specifically applied to the then present stockholders and to those who answered the circular letter and gave notice, "in writing, of their intention" to accept the provision of the trust and who therefore "within twelve months therefrom" were to receive a Trust certificate, and that all such stockholders did receive certificates.

Defendants allege that this applied to those who answered the circular letter of February 25, 1925, and that all who later became stockholders of Pioche Mines Company automatically participated in the Trust under the terms thereof. It was never intended or agreed that they could receive any other certificate than the Certificate of Stock in the Pioche Mines Company which automatically shared in the benefits of the Trust.

* * * title to the mill site was never in the Pioche Mines Consolidated or Pioche Mines Company, and that Percy H. Clark, now attorney for Debenture Holders, was so advised and that copies of all deeds conveying any and all property to the Pioche Mines Consolidated, at the time said Company was formed, were handed over to Percy H. Clark, attorney for plaintiffs, who was then attorney for the Pioche Mines Consolidated; allege that before forming the Consolidated Company, to wit, on January 28, 1923, defendant John Janney, on behalf of Exploration Syndicate, acquired from Consolidated Nevada-Utah Corporation a lease on said mill site. Said lease extended to July 1, 1942, and was recorded with the County Recorder of Lincoln County, Nevada, in Book J Miscellaneous, Page 176, on July 17, 1923, and called for a rental payment of $300 per year; allege said mill site lease was then placed in trust, which trust is set forth in Pioche Mines Company minutes and carries 51% interest in said mill site lease to Pioche Mines Company and 49% to the Exploration Syndicate. Copy of said mill site trust dated July 14, 1919 is annexed hereto and marked Defendant's Exhibit B; allege that the forming of the Pioche Mines Consolidated, the Exploration Syndicate having expanded $197,514.11 on said mill, conveyed by Quitclaim Deed all of "grantees right, title and interest in Lease on Yuba Mill Site and Mill, and other improvements located thereon", to the Pioche Mines Consolidated for 39,000 shares of its capital stock at par value which was $5.00 per share and allege that a copy of this deed was furnished to

Percy H. Clark; allege that said Quitclaim Deed conveying 49% interest of Exploration Syndicate in Lease on Mill Site to Pioche Mines Consolidated was duly recorded in Recorder's Office of Lincoln County, Nevada, in Book K Miscellaneous, Page 25, on December 29, 1928; that the Pioche Mines Company 51% interest in said trust was retained by Pioche Mines Company when Consolidated Company was formed, and still is retained; allege that after the fire at the mill the value of the Pioche Mines Company's interest in the machinery and equipment was appraised and sold to Pioche Mines Consolidated at its appraised value of $80,531.40, but the record does not show that the Pioche Mines Company sold or conveyed its 51% interest held by it under the Trust, in the mill site lease; allege that a fee of $25,000 in stock was paid to Percy H. Clark's law firm, in full for legal services rendered down to September 1, 1930, which included services in examining titles and approving title transfers made in connection with the consolidation and the defendant Consolidated Company holds receipt for said payment which was made by John Janney from his personal shares in said Company to save the Company paying the $25,000; allege that Percy H. Clark, as attorney for the said Pioche Mines Consolidated, had agreed to make examination of titles to all Company property, as a part of services rendered, and said Percy H. Clark was given, at his request, a copy of all deeds conveying property to the Pioche Mines Consolidated as above stated, and abstract of titles to the property conveyed to Consolidated Company were furnished

by County Recorders office; further allege that after the meeting with Percy H. Clark, John E. Zimmermann and R. T. Naylor in October, 1928, when the pre-consolidation agreement was arrived at and after the Consolidated Company was formed, in December 1928, and after the bond issue was subscribed by said Percy H. Clark, John E. Zimmermann and associates, defendant John Janney deemed that it would be to the advantage of all friendly interests in the said Company for the underlying fee title to the mill site to be held in friendly hands, rather than left in the hands of the Consolidated Nevada-Utah Corporation, who were the lessors, and on March 7, 1929 defendant John Janney acquired the lessors' rights in said property at his own expense and holds the said lessor's rights, intending same to be for the benefit of all stockholders, and has never charged any rents or obtained any personal profit therefrom; deny that the defendant John Janney holds title to any of the property or property rights which went into the Pioche Mines Consolidated at the time the said Pioche Mines Consolidated was organized, or which said Pioche Mines Consolidated has acquired by purchase or otherwise since its incorporation.

Defendants deny that disbursements have been made or any assessment work done on any properties with Consolidated Company funds except for the protection of Company rights and admit that, for the purpose of economy, the same force of men have done the work on Company and non-Company properties but they were not paid for with Company funds, except when done on Company properties and except

in cases where funds had been advanced and charges were made against these advances, and allege that this was a plan which reduced overhead and worked for the mutual advantage of all parties concerned and was in no way an added expense to defendant Consolidated Company.

* * * by deed dated August 8, 1939, Mines Company conveyed lots 14, 15, 16, and 17, Block 1, of Lots and Blocks Delineated on the official map of Town of Pioche, with the office building thereon erected, and allege said office building was the property of John Janney prior to June 15, 1922, on which date he conveyed said building to the Pioche Mines Company in consideration of the sum of $1.00, intending it to be used by said Company and for the benefit of its stockholders; allege that Pioche Mines Company, on July 26, 1939, sold said lots and building back to John Janney for the same consideration of $1.00 and for the additional consideration of loans of money and the obtaining of loans of money, to wit: the cash sums aggregating $91,150, most of which has been reloaned to Pioche Mines Consolidated, and other sums; allege that said transaction was for the protection of defendant Companies' creditors and stockholders and not for the purpose of injuring the creditors and stockholders as alleged; allege that as a result of said transaction defendant Companies were able to borrow the necessary funds to finance the current needs of the Company and save the credit of both Pioche Mines Company and Pioche Mines Consolidated, and that the Board of Directors of the Pioche Mines Company exercised their best judg-

ment in providing for the Company's requirements by said transaction.

Allege that the only other property transaction of Pioche Mines Consolidated has to do with an option on certain designated unpatented mining claims, which option was granted on June 2, 1930, by defendant John Janney to defendant Consolidated Company for a period of two years and afterwards extended from time to time on condition that the Pioche Mines Consolidated should perform the annual assessment work on the said claims, that the Pioche Mines Consolidated was unable to perform the assessment work for the year 1938 on said claims because of the aforesaid interference of its debenture holders with its financing, and that upon demand made to defendant Consolidated Company to perform the assessment work or else give up the option on the claims, said Consolidated Company asked that John Janney perform assessment work upon said claims and extend the option for a period of four months; that at the request of the auditor of the Debenture Holders' Committee, this option was again extended and meantime the claims have been conveyed to S. W. Ford, Trustee, who has provided for the assessment work on said claims at the expense of defendant John Janney, that the option is still in effect if the Pioche Mines Consolidated wishes to exercise it and on the same terms as originally granted; further allege that no money was ever spent upon the said claims for assessment work by the Pioche Mines Consolidated, because of the fact that the said claims were contiguous to other grounds under op-

eration of said Pioche Mines Consolidated so that the expenditures of money for assessment work by said Consolidated Company could be, and was, performed upon its own property adjoining the claims held under option.

* * * the so-called claim for $380,826.94 was a bookkeeping entry reflecting a certain loan of stock to Pioche Mines Company, and allege that Pioche Mines Company was never under any obligation to repay said loan in cash, but only to repay said loan in stock, and this obligation was discharged and extinguished by the issuance of stock in connection with the Consolidation in 1928.

* * * at the request of the Debenture-Holders' Committee, a Mr. Lieb of Barrow, Wade, Guthrie & Co., public accountants, was sent to Pioche in October 1939; allege that Mr. Lieb was unable or unwilling to spend the necessary time to complete such audit; allege that the officers and employees of the defendant Consolidated Company gave to Mr. Lieb, the auditor for the Debenture Holders' Committee, every cooperation and extended him every courtesy, that the records of the Company necessary for a complete audit were made available to him, and the defendant, John Janney, President of the Company, freely and fully answered all requests for explanation by said auditor and asked if his explanation was satisfactory, receiving an affirmative reply.

Defendants deny that the accounts of the Pioche Consolidated were audited by Mr. Lieb the accountant, but on the contrary allege that Mr. Lieb did not remain in Pioche long enough to make a complete

audit, and in spite of the urgent requests of defendants he refused to do so; further allege that Mr. Lieb, representing the firm of Barrow, Wade, Guthrie & Co., was acting in collusion with Percy H. Clark and associated bondholders, that the report purporting to be the result of an audit of the books and records of the Consolidated Company is not the result of a proper audit of said books and records, but was the result of collusion between the auditor and Percy H. Clark, and said report of auditor is intended to reflect information which said auditor received not from the Company records, but from Percy H. Clark and the Debenture Holders' Committee, and information so secured is incorrect, misleading and untrue.

* * * substantial loans have been made from John Janney to the Company, which have tided the Company over emergencies during the periods of interference with its financing; that said advances were never withdrawn except at the convenience of the Company, and despite difficulties created by opposition and interference, John Janney, through his credit and that of associated stockholders, have furnished to the Company all funds which up to this date have been required to pay said defendant Companies' necessary obligations, and maintain its property and its organization and preserve the interest of its stockholders, and at no time was the balance shifted so that defendant John Janney was ever indebted to the Company; allege that these loans were made in the period when the sale of Company shares was stopped by interference with its financing plans and also after default was declared and attachment

levied, by Percy H. Clark and his associated debenture holders; allege that during all this period defendant John Janney advanced money on Company notes without taking undue advantage of the Company's need for money in an emergency.

* * * the entire staff of defendant Consolidated Company has spent much of their time and especially the President John Janney, in recent years in catering to the whims and caprices of Percy H. Clark and associated debenture holders giving and checking estimates and answering repeated requests for Balance Sheets, and then later Balance Sheets, and other information, which was for the purpose of distraction of the management from constructive work and in opposition to Company financing.

* * * on frequent occasions Percy H. Clark, the attorney for the Company, has been asked if he considered it desirable for a stockholders' meeting to be held, and in no single instance did he ever reply in the affirmative; allege that under the pre-incorporation agreement previously referred to, it was agreed among other things who the Directors of the Consolidated Company should be, and that said agreement has been fully carried out as to such Directors; allege that the present Board of Directors with their associated groups of stockholders represented the controlling stock interest in the Company and no change in the Directors could be had without their vote, and that they never expressed any desire for change in the Board of Directors.

* * * defendant Mines Company has conveyed the office building to defendant John Janney as hereto-

fore explained, and allege that the disbursement of the $100,522.50 allegedly advanced to Pioche Mines Company was in accord with arrangements with Pioche Mines Company and Exploration Syndicate and in accord with pre-incorporation agreements and with the approval of said Percy H. Clark, the attorney for the Company and now attorney for the Plaintiffs, and the same were properly reported to the stockholders of both Pioche Mines Company and Pioche Consolidated; allege further that the details as to notes in the amount of $114,750.89, issued during 1939 and the manner in which it has disposed of said funds were disclosed as to this item in Resolution of Board of Defendant Pioche Mines Company, which resolution was specifically shown to the auditor of Debenture Holders' Committee in 1939.

* * * * *

For a First Complete Defense to the Allegations Based on Breach of Contract to Pay Interest, Script and Principal Due on Debentures, This Defendant Pioche Mines Consolidated Alleges on Information and Belief:

18. The complaint herein alleges that it was filed pursuant to the request of a Debenture Holders' Committee, and was furthermore based upon the written request of the holders of more than fifty per cent. in aggregate principal amount of the outstanding debentures of each issue. Said Debenture Holders' Committee, as is alleged in the complaint, is composed of Percy H. Clark, Chairman, Albert P. Gerhardt and Robert F. Holden. On information and belief that Committee, so composed, actively so-

licited the debenture holders for the purpose of obtaining and representing a sufficient number of debenture holders to demand that the Fidelity-Philadelphia Trust Company should institute and carry on this action. Said Clark, certain of his family and business associates, and other persons under his control, owned a sufficient number of said outstanding debentures of each of said issues referred to in the complaint so that if the bonds so held by said Clark and said persons under his control were eliminated, then the Fidelity-Philadelphia Trust Company would not be in the possession of a written request from more than fifty per cent in aggregate principal amount of the outstanding debentures of each of the debenture issues and this suit could not properly be instituted by said Trust Company, as Trustee, under the debenture trust agreements. Said Clark and said other debenture holders under his control, or who have cooperated and connived with him, may not in this suit enforce the terms of the said debentures owned by each of them by reason of their acts and conduct hereinafter set forth; nor may they accomplish an enforcement of said debentures by requesting their trustee, the plaintiff Fidelity-Philadelphia Trust Company, to institute this suit for the enforcement of said debentures on behalf of and for the benefit of said Clark and his said associates, for their said request is null and void; and accordingly this suit may not be maintained by Fidelity-Philadelphia Trust Company, as trustee, under the debenture agreements, for the benefit of said debenture holders including said Clark and his said associates.

Furthermore, by reason of the acts and conduct

of said Clark and his said associates, hereinafter set forth, payment of the scrip, interest and principal of said debentures may not be enforced in this action.

19. Said Clark was counsel for this defendant from the date of its incorporation until January 26, 1939, on which date he resigned, and said Clark was also Vice-President of this defendant from about January 7, 1929 to about February, 1940; the duties of said Clark as Vice-President concerned principally the financing of this defendant. As such Vice-President and counsel, said Clark occupied a relation of trust to this defendant and owed to it a duty of unswerving faithfulness and loyalty and a duty to work only for its best interests.

20. Disregarding the aforesaid obligation and in violation of his fiduciary duty, said Clark pursued during the years in which he was such officer and counsel a policy intentionally calculated to undermine the credit of defendant Pioche Mines Consolidated, Inc., and to prevent this defendant from properly equipping and developing its properties by threats and coercion and by interfering with and thwarting all plans to provide the necessary financial support for this defendant. The purpose and effect of said Clark's disloyal and obstructionist conduct and activities have been to reduce the value of this defendant's properties and stock, thus preventing additional financing, and to precipitate a situation in which this defendant's assets may be required to be sold at a fraction of their real value to satisfy the judgments sought by the trustee for the debenture holders, and such properties upon such sale will be

bought in for and on account of said Clark and others associated with him. The said Clark has evidenced from an early date an intent and purpose to seize control of the properties of said company in derogation of the rights and interests of said Company, its other stockholders and creditors other than the debenture holders represented by said Clark.

21. Among the wrongful, unlawful and disloyal acts and conduct of said Clark and his associates are the following acts:

(a) In 1928 upon the strong advice, suggestion and recommendation of said Clark and his associates, this Company issued the first series of debentures for the enforcement of which this action is brought. Said debentures were issued only upon the express promise and agreement made by said Clark and his associates to cooperate and furnish capital for the financing necessary to develop, equip and operate the properties of this defendant. After the issue of said debentures said Clark and his associates wholly failed to perform the promise and agreement on their part made relative to the financing of this defendant.

(b) Said Clark at his own request and suggestion became Counsel for the Company upon the express promise that he or his firm would care for and properly handle all of the legal problems of this defendant. Said Clark has failed to carry out his obligations in this respect to this defendant.

(c) Said Clark took unfair advantage of his position as Counsel to this defendant to render opinions designed to block and delay the adequate financing of this defendant.

(d) Said Clark improperly in violation of his

duties as Counsel and Vice President of this defendant and in violation of his agreement to cooperate in the financing of this defendant, took positions and did certain acts relative to the registration of this defendant's stock with the Securities and Exchange Commission which effectively prevented and delayed the sale of this defendant's stock and the financing of this defendant.

(e) Said Clark at various times has taken steps to block the sale of this defendant's stock by communicating with prospective purchasers in such a manner as to cast doubt upon defendant's title to mining properties and otherwise to interfere and hamper such sales.

(f) Said Clark suggested plans for financing this defendant, which plans were suggested for the sole purpose of delaying and preventing the financing of this defendant in the manner theretofore determined upon by the management of this defendant.

(g) Said Clark has in various ways and at various times prevented the filing of a prospectus necessary before stock of this defendant could be sold, and threatened that unless he were retained as attorney in connection with filing the second prospectus he would organize the debenture holders in opposition to the proposed sale of securities.

(h) In connection with the reorganization agreement of January 24, 1938, Percy H. Clark, John E. Zimmermann and Albert P. Gerhardt agreed to use their best efforts to obtain signatures of debenture holders up to the percentage required to make the reorganization plan operative. The above named in-

dividuals were appointed a committee of the debenture holders for the purpose of carrying out the terms of the reorganization agreement and the reorganization plan. In violation of this agreement, nevertheless, said Clark and those associated with him, after obtaining the signatures of 75% in interest of such debenture holders, took no further steps to obtain the balance of signatures required, and said Percy H. Clark in particular threatened to withhold his signature and other signatures unless he received a legal fee and a general release of liability for his previous acts and transactions and those of his firm in connection with the defendant Companies including his acts of obstruction and interference as related in this Answer. Upon the denial of these and other unjustifiable demands said Clark and those associated with him began raising numerous false and unfounded objections to the reorganization plan and preventing the signature of such agreement by making false and unfounded statements as to this defendant and its management. Said Clark with the cooperation and connivance of his associates, furthermore violated his duty as an officer and counsel of this defendant and as a member of the debenture holders committee by refusing to disclose upon request of the President of this defendant the names of the debenture holders who had not signed the reorganization agreement. By his activities and failure to cooperate he prevented the reorganization plan from taking effect and engaged in a course of action intentionally calculated to prevent this defendant from obtaining the necessary financing, although

adequate financing under the reorganization plan could have been obtained but for the actions and conduct of said Clark and his associates.

22. By his said course of action said Clark, with the cooperation and connivance of his associates, intentionally precipitated the present situation in which the company has been unable to pay the interest due on its debenture issues. He has thereby rendered impossible the performance by this defendant of the obligations which are sought to be enforced in this action.

23. After causing his company to default in the aforesaid manner said Clark assumed the leadership as chairman of a debenture holders committee composed of John E. Zimmermann, Albert P. Gerhardt, Robert F. Holden and himself, which functioned for the purpose of enforcing the obligation of this defendant, the performance of which by said company had been rendered impossible through the said Clark's opposition and disloyal activities, with the cooperation and connivance of his associates including other members of said committee.

24. The said Albert P. Gerhardt and John E. Zimmermann collaborated with the said Clark while he was officer and counsel of the Company and subsequently thereto. They were fully cognizant of the purpose and effect of his course of action, notwithstanding which knowledge they continued to collaborate and associate with Clark as members of the Debenture-Holders' Committee formed for the purpose of enforcing payment of the principal and interest due on the Company's debenture issues.

For a Second Complete Defense to the Allegations Based on Breach of Contract to Pay Interest, Scrip and Principal Due on Debentures, These Defendants Allege on Information and Belief:

* * * * *

26. Said acts by said Clark and his said associates were done pursuant to a conspiracy entered into by said Clark, his said associates, and other persons, the names of whom are not now known to these defendants, for the purpose of taking from these defendants its valuable mining and ore properties for the benefit of said Clark, his said associates and other parties, the identity of whom is not now known to defendants. The properties of the defendant companies are of very great value, far in excess of any sums due on said debentures by way of principal and interest, and said great value of said properties has been for some time well known to said Clark and to his said associates.

27. The formation of a Debenture-Holders' Committee by said Clark, his activity, and the activity of the said Committee in the solicitation of debenture holders, the request for the institution of this suit, and the institution thereof, are all part of the scheme and conspiracy heretofore referred to on the part of said Clark and his said associates, known and unknown, to take over for their own use and benefit the valuable properties of these defendants to the exclusion of these defendants and their other creditors and security holders.

For a Third Complete Defense and Counterclaim to the Allegations Based on Breach of Contract to Pay Interest, Scrip and Principal Due on Debentures, Defendants Allege on Information and Belief:

* * * * *

29. By reason of said acts and conduct by said Clark and his said associates, who are all holders of debentures and who are represented by Fidelity-Philadelphia Trust Company, as Trustee, in this suit, defendant Pioche Mines Consolidated has suffered damages in excess of Five Million Dollars ($5,000,000), which said sum constitutes a defense, counterclaim and set-off against the demands in this suit made by said Fidelity-Philadelphia Trust Company, as Trustee.

For a Fourth Complete Defense and Counterclaim to the Allegations Based on Breach of Contract to Pay Interest, Scrip and Principal Due on Debentures, Defendants Allege on Information and Belief:

* * * * *

31. By reason of said acts and conduct by said Clark and his said associates, who are all holders of debentures and who are represented by Fidelity-Philadelphia Trust Company, as Trustee, in this suit, defendant Pioche Mines Consolidated has suffered damages in excess of Five Million Dollars ($5,000,000), which said sum constitutes a defense, counterclaim and set-off against the demands in this suit made by said Fidelity-Philadelphia Trust Company, as Trustee.

For a Fifth Defense and Counterclaim Against E. Clarence Miller and Edward C. Dale, Defendants Allege on Information and Belief:

* * * * *

33. Defendants allege that said plaintiffs, E. Clarence Miller and Edward C. Dale, in collaboration and in collusion with said Percy H. Clark, Albert P. Gerhard and Robert F. Holden, and others unknown to defendants, instituted and commenced this action against defendants and filed and caused to be filed the complaint on file herein, and said plaintiffs well knew and were fully cognizant of the contents thereof and the purport and effect of this action and said complaint. Said plaintiffs well knew that such complaint contained statements that were false and defamatory which statements were calculated to do great damage to defendant Consolidated Company, its officers, its directors and its management, but said plaintiffs nevertheless neglected to secure from defendant Consolidated Company or otherwise the true facts relating thereto. Said false and defamatory statements were known to be untrue, and were made in collaboration with Percy H. Clark, Albert P. Gerhard and Robert F. Holden and plaintiff, Fidelity Trust Company. Said statements are contained in the complaint on file herein and, among others, are as follows:

1. Page 22—Line 4-7. "John Janney and his dummy Board of Directors have never rendered any account to stockholders and debenture-holders showing the amounts received, the total present indebted-

ness and now these large sums have been expended."

2. Page 22—Line 20-24. "Although Pioche Consolidated in 1929 advanced $100,522.50 to Mines Company, and during 1939 it issued its notes to the amount of $114,750.89 to John Janney and others, no account has ever been rendered by Mines Company of the manner in which it has disposed of the funds so acquired."

3. Page 17—Line 16-22. "John Janney failed to perform in full the obligations undertaken by him at the time of the adoption of the consolidation plan and other wrongful acts of commission and omission in connection with the operation of the combined enterprise have occurred since the incorporation of Pioche Consolidated, some of which involve grave breaches of trust and for which John Janney has been responsible * * *."

4. Page 17—Line 6-9. "The reports disclose gross mismanagement and waste and John Janney has again failed to make a full disclosure of material facts as requested by the Committee and has failed to cooperate with them in other respects."

5. Page 3—Line 23-25. "* * * John Janney absolutely controls Pioche Consolidated and Mines Company, their directors, properties and affairs, and has himself been responsible for the wrongful acts of which Stockholders complain * * *."

6. Page 20—Line 16-20. "The above-mentioned failure of the said John Janney as President of Pioche Consolidated and his dummy Board of Di-

rectors to maintain and not subordinate the above-mentioned claim of $380,826.94 against Mines Company constitutes wilful and wrongful mismanagement of said Pioche Consolidated."

That aforesaid John Janney was and is President of defendant Pioche Consolidated Company.

That said plaintiffs in collaboration and collusion with said Percy H. Clark, Albert P. Gerhard and Robert F. Holden and plaintiff, Fidelity Trust Company and others unknown to defendants, caused copies of said complaint with accompanying papers to be circulated and distributed among debenture holders and other persons. That the filing of said complaint and the circulation thereof with accompanying papers, as aforesaid, with the aforesaid statements therein, was intended to depreciate and destroy the values in the defendant Consolidated Company.

* * * * *

February 17, 1941.

/s/ DOUGLAS A. BUSEY,
Attorney for Defendant, Pioche Mines Company.

/s/ CLARENCE M. HAWKINS,
Attorney for Defendant, Pioche Mines Consolidated and Defendant John Janney.

Duly Verified.

[Endorsed]: Filed February 17, 1941.

[Title of District Court and Cause.]

ANSWER OF FIDELITY-PHILADELPHIA TRUST COMPANY AND E. CLARENCE MILLER AND EDWARD C. DALE TO COUNTERCLAIMS OF PIOCHE MINES CONSOLIDATED, INC.

A

Fidelity-Philadelphia Trust Company (hereinafter sometimes referred to as "Fidelity") answers the counterclaims made by Pioche Mines Consolidated, Inc. (hereinafter sometimes referred to as "Company") in Paragraphs 28 and 29 and 30 and 31 of Defendants' Amended Answer, as follows:

28.

Fidelity alleges that the allegations of Paragraph 28 of Defendants' Amended Answer, including the allegations of Paragraphs 18 to 24, inclusive, realleged in Paragraph 28, are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted.

Although Fidelity believes the allegations of said Paragraphs are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted, nevertheless, it admits, denies and alleges in regard to the statements contained in the Paragraphs above referred to as follows:

18. Fidelity admits that a written request was delivered to it in the form attached to the Complaint as Exhibit "H", duly executed by the holders of more than 50% in aggregate principal amount of the outstanding debentures of each of the two issues, and

that Complaint herein was filed pursuant to the request of the Debenture-holders' Committee.

Fidelity alleges that it is Trustee named in the two Trust Agreements (Exhibit "A" and "D" to the Complaint in this cause) under which the two issues of debentures of Pioche Consolidated were issued, as more particularly set forth in the Complaint; that said Agreements both provide (a) that in case of default in the payment of any installment of interest on any of the bonds, which default shall continue for a period of thirty days, the Trustee, by written notice to the Company, may and shall, upon the written request of the holders of 50% in aggregate principal amount of the bonds then outstanding, declare the principal of all of the bonds then outstanding to be due and payable immediately; and (b) that upon such declaration the same shall become immediately due and payable; and (c) that in case of such default, if the Company fails to pay the amount due forthwith upon demand, the Trustee shall be empowered to institute such action or proceedings at law or in equity, as may be advised by counsel, for the protection of the bondholders and the collection of the sums due and unpaid; that Pioche Consolidated has defaulted in the payment of interest on both series of debentures; that Fidelity duly declared the principal of all of said bonds due and payable immediately and made formal demand for payment and upon failure of the Company to pay the amounts due on demand, Fidelity instituted this suit in its capacity as Trustee under said Trust Agreements; that it derives all necessary authority to bring this

suit from said Trust Agreements and although the holders of more than 50% in aggregate principal amount of the outstanding debentures of each issue requested it to declare the bonds immediately due and payable, and the Debenture-holders' Committee requested it to bring suit, its authority to do so was in no way dependent on said written requests. Fidelity denies that the written requests of Clark and others are null and void and avers that in view of said requests and the deposit with it of a very large majority of the outstanding debentures, coupons and scrip, as set forth in the Complaint, it was necessary for it to institute this suit by reason of the obligations imposed upon it as Trustee under the said Trust Agreements.

Fidelity admits that Debenture-holders' Committee is composed of Percy H. Clark, Chairman, Albert P. Gerhard and Robert F. Holden, and on information and belief, that some of the members of said Committee solicited certain debenture-holders to sign the written request (Exhibit "H" to the Complaint) and the Debenture-holders' Agreement (Exhibit "J" to the Complaint) and that Percy H. Clark is the beneficial owner of $60,000. of debentures of 1929 and $55,000. of debentures of 1930 held in the name of Willoughby Company, which signed said written request and Debenture-holders' Agreement, but denies that such bonds, or any other bonds, the holders of which have signed the request and Agreement, can be eliminated as suggested, and on information and belief denies that members of Clark's family and his business associates and other persons who

signed said request and Debenture-holders' Agreement did so under the control of said Clark.

Fidelity denies that it could not properly institute this suit and collect the amounts due, as more particularly set forth in the Complaint. Fidelity, on information and belief, denies each and every other allegation of Paragraph 18.

19. Fidelity, on information and belief, admits that said Clark acted as counsel for Company and served as Vice-President for the periods and under the conditions hereinafter stated, and as such Vice-President and counsel occupied a relation of trust to the Company and owed to it a duty of unswerving faithfulness and loyalty, and a duty to work only for its best interests. Fidelity is informed, believes and therefore avers that in October, 1927 an arrangement was entered into between Clark and Janney, by which Clark was to act as Eastern counsel for Pioche Mines Company; that in October, 1928, when it was tentatively agreed to consolidate the ownership and control of properties owned by Pioche Mines Company and the Exploration Syndicate into a new Company to be known as Pioche Mines Consolidated, Inc., Janney engaged Clark to do the legal work involved in carrying into effect the consolidation as so agreed upon; that after said Company had been incorporated and the consolidation had been authorized, to wit, on or about December 26, 1928, Clark was elected a Vice-President of the Company, with very limited authority; that commencing on or about January, 1936, Janney became unwilling to see Clark or discuss the affairs of the Company with him, except

when absolutely necessary, and Clark received little or no information concerning the Company and performed only such duties as were necessary in connection with the debentures, scrip, coupons, etc., which had been theretofore within his particular charge; that Janney gave no explanation of his change of attitude and Clark continued to hold the positions of counsel and Vice-President until he was forced to resign both of said offices on or about the 15th day of January, 1937, by reason of unfounded charges made by Janney; that on February 5, 1937, upon the written request of Janney, he withdrew his resignation in order that he might be named as counsel in the extended Prospectus dated December 26, 1936; that said resignation was withdrawn under an arrangement which provided, among other things, that Clark's firm would continue to act as counsel only in such matters as should be entrusted to its charge; that Janney violated the terms of the arrangement in every essential particular; that Clark's firm, by letter to John Janney dated January 26, 1939, finally terminated any connection it might have with the Company as its legal representative, stating it seemed desirable to do so as the firm wished to be free to advise a group of debenture-holders who had been considering how they could best reorganize to protect their investment, and on February 3, 1940 Clark wrote Janney resigning as Vice-President of the Company, to take effect immediately.

20. Fidelity, on information and belief, denies the allegations and each of them contained in Paragraph 20.

21. Fidelity is without knowledge or information sufficient to form a belief as to who are the parties referred to at sundry places in Paragraph 21 of the Answer as "and his associates" following the name Clark.

21(a). Fidelity is informed, believes and therefore avers that in 1928 Clark suggested a plan of consolidation intended to meet the requirements of the financial situation with which Pioche Mines Company and Exploration Syndicate were confronted at the time, and this plan involved the consolidation of the ownership or control of all of the properties into a new company and the issue by said company of convertible debentures of the general character of those issued under the two Trust Agreements above referred to; that this plan was discussed by Messrs. Janney, Zimmermann, Naylor, Milner, Ferry, Grubbs and Clark, and after having been modified to meet the views of all the above named parties, was unanimously approved, adopted and put into operation. Fidelity denies, on information and belief, that said debentures were issued only upon the express promise and agreement of Clark, as averred, and that Clark wholly failed to perform any promise or agreement on his part relating to the financing of defendant but, on information and belief avers that Clark did agree that if the plan was carried out substantially as agreed upon he would subscribe for some of the debentures when offered, and would cooperate with the management to make the plan a success; that he did subscribe and pay for $60,000. of the debentures of 1929 and he cooperated with Janney and

his Companies for a number of years until Janney made it impossible for him longer to do so.

21(b). Fidelity, on information and belief, admits that at his own suggestion Clark became Eastern counsel for Pioche Mines Company in October, 1927, and later represented Pioche Consolidated in many matters, but denies on information and belief each and every other allegation of Paragraph 21(b).

21(c). Fidelity, on information and belief, denies each and every allegation of Paragraph 21(c).

21(d). Fidelity, on information and belief, denies each and every allegation of Paragraph 21(d).

21(e). Fidelity, on information and belief, denies each and every allegation of Paragraph 21(e).

21(f). Fidelity, on information and belief, denies each and every allegation of Paragraph 21(f).

21(g). Fidelity, on information and belief, denies each and every allegation of Paragraph 21(g).

21(h). Fidelity, on information and belief, admits that Percy H. Clark, John E. Zimmermann and Albert P. Gerhard were appointed a Committee of debenture-holders by the Reorganization Agreement (which never became operative) for the purpose of carrying out the terms of the Reorganization Agreement and the Reorganization Plan; that Percy H. Clark and Albert P. Gerhard agreed to use their best efforts to obtain signatures of debenture-holders up to the percentage required to make the reorganization plan operative, and that they succeeded in obtaining the signatures of approximately 75% in amount of such debenture-holders; that it was understood that John E. Zimmermann could not take an

active part in obtaining signatures as he planned to go to South America for an extended absence, and that he did go prior to the issuance of the plan and did not return to Philadelphia until late in March, 1938. Fidelity is without knowledge or information sufficient to form a belief as to the truth of the averment that "adequate financing under the reorganization plan could have been obtained." Fidelity, on information and belief, denies each and every other allegation of Paragraph 21(h).

22. Fidelity, on information and belief, denies each and every allegation of Paragraph 22.

23. Fidelity admits that Clark was chosen as Chairman of the Debenture-holders' Committee now composed of Albert P. Gerhard, Robert F. Holden and himself, and that Clark accepted said office and, upon information and belief, avers that John E. Zimmermann resigned as a member of said Committee before having attended any meeting; that said Committee functioned for the purpose of performing the duties imposed upon it by the Debenture-holders' Agreement (Exhibit "J" to the Complaint) including, among other duties, that of enforcing the just obligations of defendant in case that shall prove necessary, but on information and belief denies each and every other allegation of Paragraph 23.

24. Fidelity, on information and belief, admits that Albert P. Gerhard, commencing about December 26, 1937, and John E. Zimmermann, commencing October, 1928, collaborated with Clark while he was an officer and counsel of the Company, and subsequent thereto at certain times and from time to time,

concerning particular matters relating to the affairs of the Company but, on information and belief, denies that this collaboration, or any thereof, was for any improper purpose or effect, and is informed, believes and therefore avers that this collaboration, down to November, 1939, was for the benefit and assistance of Pioche Consolidated, and subsequent thereto for the protection of the investors in the Pioche enterprise.

29.

Fidelity is without knowledge or information sufficient to form a belief as to who are the parties referred to as Clark's "said associates" but admits that as Trustee under the said Trust Agreements it represents in this suit the holders of all outstanding debentures of both issues, and avers that attached hereto as Exhibit "A" is a statement listing the names of the debenture-holders, with amounts of debentures owned by each, in three classses, to wit: (1) those who have deposited their debentures with Fidelity and to whom non-negotiable receipts have been issued; (2) those who have not deposited their debentures but whose ownership of debentures to the amounts stated on March 29, 1941 has been verified; and (3) those who were at one time holders or owners of debentures, the present ownership of which Fidelity has not verified. Fidelity, on information and belief, denies each and every other allegation of said Paragraph 29.

30.

Fidelity alleges that the allegations of Paragraph 30 of Defendants' Amended Answer, including the

allegations of Paragraphs 18 to 27, inclusive, re-alleged in Paragraph 30, are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted.

Although Fidelity believes the allegations of said Paragraphs are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted, nevertheless, it admits, denies and alleges in regard to the statements contained in the Paragraphs above referred to as follows:

18 to 24, inclusive. Fidelity admits, denies and alleges in regard to the statements contained in Paragraphs 18 to 24, inclusive, as hereinbefore set forth under Paragraph 28.

26. Fidelity denies, on information and belief, that Clark ever entered into a conspiracy with any person or persons whatsoever for any purpose whatsoever.

Except as stated in Paragraph XIII of the Complaint in this action, Fidelity is without knowledge or information sufficient to form a belief as to the truth of the averments that the properties of defendant Companies are of very great value, far in excess of any sums due on said debentures by way of principal and interest, and that said great value of said properties has been for some time known to said Clark and his associates.

27. Fidelity, on information and belief, denies that the acts of Clark and the Debenture-holders' Committee alleged in said Paragraph 27 formed part of any scheme or conspiracy between Clark and any

other party or parties whatsoever for any purpose whatsoever.

31.

Fidelity repeats with relation to Paragraph 31 the allegations of Paragraph 29 concerning the parties referred to as Clark's "said associates", and the matters admitted and averred in said Paragraph 29. Fidelity, on information and belief, denies each and every other allegation of said Paragraph 31.

B

E. Clarence Miller and Edward C. Dale (hereinafter sometimes referred to as "Stockholders") answer the Counterclaims made by Pioche Mines Consolidated, Inc. (hereinafter sometimes referred to as "Company") in Paragraphs 32, 33 and 34 of Defendants' Amended Answer as follows:

32.

Stockholders allege that the allegations of Paragraph 32 of Defendants' Amended Answer, including the allegations of Paragraphs 18 to 24, inclusive, and Paragraphs 26 and 27, re-alleged in said Paragraph 32, are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted.

Although Stockholders believe the allegations of said Paragraphs are immaterial, impertinent and irrelevant and fail to state a claim upon which relief can be granted, nevertheless, they admit, deny and allege in regard to the statements contained in the Paragraphs above referred to as follows:

18 to 24, inclusive. Stockholders, on information and belief, make the same admissions, allegations and denials with regard to said Paragraphs 18 to 24, inclusive, as are made by Fidelity-Philadelphia Trust Company under Paragraph 28 above.

26 and 27. Stockholders, on information and belief, make the same admissions, allegations and denials with regard to said Paragraphs 26 and 27 as are made by Fidelity-Philadelphia Trust Company under Paragraph 30 above.

33.

Stockholders admit that they were fully cognizant of the contents of the Complaint filed in the above entitled cause when they joined as parties-plaintiff in this suit, and aver that they joined as parties-plaintiff for the purposes more particularly set forth in the last paragraph of Paragraph XVII of the Complaint.

Stockholders deny that they, in collaboration and collusion with Percy H. Clark, Albert P. Gerhard and Robert F. Holden, Fidelity, or any other party or parties, caused copies of the Complaint, with accompanying papers, to be circulated and distributed among debenture-holders, or any of them, or among any other persons, or that they took any action intended to depreciate or destroy the values in defendant, Consolidated Company.

Stockholders, on information and belief, deny that said Complaint contains statements that were false and defamatory and that they neglected to secure

the true facts relating thereto, and on information and belief deny each and every other allegation of Paragraph 33 not herein particularly referred to.

34.

Stockholders deny each and every allegation of Paragraph 34.

THATCHER & WOODBURN,
/s/ By WM. WOODBURN.

CLARK, HEBARD & SPAHR,
/s/ By PERCY W. CLARK.

Duly Verified.

[Endorsed]: Filed April 10, 1941.

[Title of District Court and Cause.]

Exhibit "X"

SUPPLEMENTAL COMPLAINT

To the Honorable, the Judge of Said Court:

Fidelity - Philadelphia Trust Company (hereinafter sometimes referred to as "Fidelity"), corporate plaintiff, and Edward Dale, surviving individual plaintiff, two of the plaintiffs in the above entitled action, serve this Supplemental Complaint in accordance with Rule 15 (d) of the Federal Rules of Civil Procedure setting forth transactions, occurrences and events which have happened since the date of the Complaint, to wit:

I. That a Settlement Agreement was entered into under date of July 8, 1942, by and between John Janney, Richard K. Baker, representing themselves

as unsecured creditors of Pioche Mines Consolidated, Inc. and Pioche Mines Company and as stockholders of Pioche Mines Consolidated, Inc. (hereinafter designated as the "Creditors Committee"), Percy H. Clark, Robert F. Holden and Albert P. Gerhard, representing a majority of the deposited debenture bonds of Pioche Mines Consolidated, Inc., and also representing themselves as stockholders of Pioche Mines Consolidated, Inc. (hereinafter designated as the "Debenture Holders Committee"), Pioche Mines Consolidated, Inc. and Pioche Mines Company, for the purpose of reorganizing Pioche Mines Consolidated Inc., Pioche Mines Company and Nevada Volcano Mines Company so that the properties of these companies might at the earliest possible moment be turned into an enterprise profitable to the creditors and stockholders of said companies.

II. That said Settlement Agreement provides in substances as follows:

(a) For the vesting of the title to the properties of the above named constituent companies and certain other properties held in trust by John Janney in a new company at the time of the reorganization or immediately thereafter.

(b) For the issue by the new company of

1. Income bonds maturing in 30 years in face amount equal to the outstanding debenture bonds and the principal of all other debts as certified by Mr. Woods, the Treasurer and an independent accountant.

2. Preference notes payable in five years in face

amount equal to all new moneys furnished to pay the reasonable reorganization expenses which must be paid in cash as defined in the agreement.

3. Income notes maturing in 30 years in face amount equal to the principal amounts owed to emergency creditors as defined in the agreement and for reasonable reorganization expenses not paid in cash or preference notes.

4. Common stock.

47½% to be issued to the holders of outstanding common stock of Pioche Consolidated and stocks of Pioche Mines Company and Nevada Volcano Mines Company not held by the Consolidated Company, and

47½% to be issued to creditors of Pioche Consolidated and Pioche Mines Company of which 55% should be issued to Fidelity-Philadelphia Trust Company for the account of the debenture-holders and 45% should be issued to all other creditors, and

5% to be available to be issued to the preference note-holders as an inducement to furnishing the new moneys required by the company.

(c) That reasonable reorganization expenses shall include, in addition to the reasonable fee and disbursements of the debenture trustee, the reasonable disbursements of the Debenture Holders Committee, all other expenditures (not paid for by new moneys furnished to the corporation or by preference notes) in connection with the litigation pending in the United States Court for the district of Nevada and in connection with the proposed reorganization. The attorneys for Fidelity-Philadelphia Trust Company and Debenture Holders Committee are to receive

$35,000. face amount of income notes and the attorneys for the Pioche Mines and Consolidated companies and Mr. John Janney are to receive a like amount in income notes. The notes to be paid as fees to the attorneys for Fidelity and Debenture Holders Committee together with the 55% of 47½% of common stock to be issued to the debenture-holders shall be delivered to Fidelity, as Trustee under the trust agreements under which the debentures are outstanding for the account of the debenture-holders.

(d) That the notes and bonds shall contain the usual provisions for such instruments and specify the rate of interest, callable, sinking fund and other particular features to be incorporated in these instruments.

(e) That the purposes of the reorganization above stated are to be accomplished in a manner deemed most expedient by the attorneys for all parties concerned and it shall not be material whether the reorganization is accomplished through statutory merger and consolidation, through judicial reorganization under the federal laws or otherwise.

(f) That the stock of Nevada Volcano Mines Company held by John Janney in the Nevada Volcano Trust shall be delivered free and clear of the trust to the new company resulting from the reorganization.

(g) That the parties realize it will be necessary to obtain certain sums in cash in order to consummate the proposed reorganization and agree to use their best efforts to obtain such cash in exchange for

preference notes with stock bonus as above set forth.

(h) That the Debenture Holders Committee represents that it is acting under authorization dated June 8, 1942, from a majority of the owners of debentures deposited under the Debenture Holders Agreement dated February 1, 1939 (a copy of which is attached to the Complaint in the above entitled suit as Exhibit "J") which is made a part of the Settlement Agreement by reference and which empowers the Committee to negotiate the arrangement in the nature of a reorganization provided for in the Settlement Agreement for the purpose of avoiding and terminating litigation. The Committee agrees to use its best efforts to obtain the consent of all the undeposited debentures and all of the stockholders who are deposited or undeposited debenture-holders to the plan of reorganization.

(i) That the Creditors Committee represents that by executing the agreement it is giving the consent of Messrs. Janney and Baker to the settlement and that it will use its best efforts to obtain the consent of the directors of Pioche Consolidated and Pioche Mines Company and of all the creditors of any of the companies exclusive of the deposited debenture-holders and to obtain the consent of all of the stockholders of any of the companies involved except such stockholders as are holders of deposited debentures, that Mr. Baker will use his best efforts to obtain the consent from the emergency creditors and creditors other than the deposited debenture-holders and that Mr. Janney will use his best efforts to obtain the consent of the stockholders of the companies in-

volved and of the non-deposited debenture-holders and other creditors, and these two gentlemen agree to obtain the consent of the majority of the Boston creditors and of the stockholders and to sign the endorsements to the contract.

(j) That all parties agree that it will be in the best interests of the new company to negotiate and obtain a long-term lease of the properties of the new company under the terms of which an income will be assured to the new company, and all parties agree to use their best efforts to obtain for the new company such a lease which by its terms will be profitable to the new company; that the execution of the Settlement Agreement by Debenture Holders Committee was accompanied by the assurance given by John Janney that he would resume negotiations with Smelting Company at an early date and continue such negotiations with Smelting Company, or some other company financially sound and reputable, in good faith, for the purpose of consummating a lease as soon after the completion of the merger and reorganization as possible, and that he would consult with his New York attorneys, Messrs. Dwight, Harris, Koegel & Caskey, concerning legal matters involved in the lease and keep that firm informed from time to time of progress in order that it might be in position to facilitate the negotiations and keep the Debenture Holders Committee advised. No information concerning any such negotiations has been furnished to the Committee since the execution of the Settlement Agreement.

(k) That the holders of income bonds shall be en-

titled to a representative upon the Board of the new company.

(l) That the suit now pending in the above entitled cause shall be discontinued by all parties without costs in time to consummate the reorganization for which provision is made and that in the meantime said suit shall not be brought on for trial by any party.

A full true and correct copy of the Settlement Agreement is attached hereto marked Exhibit "A".

III. That the Debenture Holders Committee in accordance with the said agreement has used its best efforts to obtain the consent to the plan of reorganization of all of the debenture-holders who had not deposited their debentures with Fidelity prior to the execution of the Settlement Agreement and there now have been deposited with Fidelity as depositary $597,-600. of debentures (together with scrip and coupons appertaining thereto) comprising all of the debentures on the Committee's list. The holders of debentures which remain undeposited are members of John Janney's group and are not represented by or associated with the group of creditors represented by the Committee.

The Debenture Holders Committee also secured the consent of many stockholders who were the owners of deposited or undeposited debentures to the plan of reorganization by inducing them to sign proxies to vote at the meeting of the stockholders called by the company to be held on July 15, 1943. Such proxies representing approximately 190,000 shares and the parties named as proxies were present

at the meeting on July 15, 1943, and adjourned sessions of said meeting for the purpose of voting these shares for the approval of the settlement and merger agreements. The Debenture Holders Committee has performed each and all of the obligations undertaken by it by the Settlement Agreement.

IV. That Fidelity-Philadelphia Trust Company as trustee under the two trust agreements (dated January 2, 1929 and October 1, 1930) hereby certifies that $687,300. of debentures were certified by it as trustee under said trust agreements and still remain outstanding, and it certifies as depositary under the Debenture Holders Agreement that $597,600. of said debentures (together with scrip and coupons appertaining thereto) have been deposited with it as depositary under said agreement and it has issued its non-negotiable receipts to the depositors of such debentures, scrip and coupons, which receipts still remain outstanding.

V. That on or about November 22, 1943, at the request of Pioche Consolidated, Fidelity as depositary requisitioned that company for $582,350. of income bonds and 1,075,891 shares of stock for delivery to holders of its non-negotiable receipts giving the names and addresses in which such bonds and shares should be issued.

That on or about the 27th day of December, 1943, Pioche Mines Company and Nevada Volcano Mines Company were duly merged into Pioche Mines Consolidated, Inc. by a Merger Agreement duly authorized and certified filed in the office of the Secretary

of State of the state of Nevada as shown by the copy thereof which is duly certified by the Secretary of State of the state of Nevada attached hereto marked Exhibit "B".

That on or about the 24th day of April, 1944, Fidelity received a letter from Pioche Consolidated dated April 17, 1944, transmitting $539,800. of income bonds and 1,005,766 shares of capital stock of Pioche Consolidated, the surviving company, registered in names of parties on Fidelity's requisition; that Fidelity has never received from Pioche Consolidated the remaining bonds and stock listed on its requisition to be issued in the following names:

	Income Bonds	Stock
Henry G. Brooks	$ 2,500	4,125
E. W. Clark & Company	40,000	66,000
Fidelity-Philadelphia Trust Co.	50	....
	$42,550	70,125

That the above-mentioned $40,000. of debentures listed on Fidelity's requisition of November 22, 1943, in the name of E. W. Clark & Company are represented by a corresponding face value of Fidelity's non-negotiable receipts outstanding in the name of Drexel and Company. Fidelity has been requested to cause the new securities to be issued in the name of E. W. Clark & Co.

That on or about April 24, 1944, Fidelity received from Pioche Consolidated with the other securities above referred to $35,000. face amount of income notes registered in its name for the account of the

attorneys for Fidelity-Philadelphia Trust Company and Debenture Holders Committee.

VI. That Fidelity holds the debentures, scrip and coupons deposited with it as well as the income bonds, stock and income notes delivered to it by Pioche Consolidated as above set forth as depositary under the Debenture Holders Agreement for the protection of the debenture-holders and for the holders of its outstanding non-negotiable receipts, all as provided in said agreement which is a part of the Settlement Agreement, and because of the provisions of the Debenture Holders Agreement, Fidelity is unable to surrender the deposited debentures for cancellation and distribute the income bonds and stock to the holders of its non-negotiable receipts and the income notes to the said attorneys until defendants perform the remaining obligations (hereinafter more particularly set forth) imposed upon them by the terms of the settlement.

VII. That Fidelity as depositary under said Debenture Holders Agreement is fully authorized and prepared and has offered to surrender all deposited debentures to Fidelity as trustee under said two trust agreements for cancellation and to take any and all such further actions for the discontinuance of the above entitled suit as may be necessary and proper contemporaneously with the performance of corresponding obligations by defendants and other parties, and thereafter will distribute the new securities and cash to the parties entitled thereto and it is its desire and intention to cooperate with other parties for the

consummation of the proposed reorganization in accordance with the aforementioned agreements at the earliest possible date.

VIII. That Fidelity as trustee under the said two trust agreements and one of the plaintiffs in the above entitled suit upon the delivery to it of the outstanding debentures in the amount of $89,700. for cancellation and the performance by the parties of the several provisions of the Settlement Agreement will join with the other parties in the discontinuance of said suit.

IX. That E. Clarence Miller and Edward C. Dale, the other plaintiffs in said suit, signed proxies to be voted at the aforesaid meeting of Pioche Consolidated stockholders called for July 15, 1943, and will join in the discontinuance of said suit in time for the consummation of the proposed reorganization.

X. That defendants although repeatedly requested by Fidelity and Debenture Holders Committee to arrange for a closing settlement have steadfastly refused to negotiate such an arrangement and to take part in such a settlement.

XI. That the defendants and other parties to the Settlement Agreement have performed the same to the following extent and in the following particulars:

(a) That John Janney and Richard K. Baker, parties to the Settlement Agreement have secured consents to the plan of reorganization by the directors of Pioche Consolidated and Pioche Mines Companies and these companies have duly executed the

Settlement Agreement and have secured powers of attorney authorizing them to act for holders of undeposited debentures, other creditors and others in matters relating to the plan of reorganization.

(b) That defendants on or about December 27, 1943, caused Pioche Mines Company and Nevada Volcano Mines Company to be merged into Pioche Mines Consolidated, Inc., as more particularly above set forth.

(c) That Pioche Consolidated (the surviving company) has issued its income bonds and stock in response to Fidelity's requisition to the extent above set forth.

(d) Pioche Consolidated, the surviving company, has issued and delivered to Fidelity $35,000. in face amount of income notes to cover fees of attorneys of Fidelity and Committee as above set forth.

XII. That the defendants and/or the other parties to the Settlement Agreement have failed and neglected and continue to fail and neglect to perform said agreement in the following particulars:

(a) They have not delivered or caused to be delivered to Fidelity the $89,700. of outstanding undeposited debentures or the balance of the 1,112,287 reclassified shares to be held for the account of the outstanding debentures as provided in the Merger Agreement (Article Sixth 2).

(b) They have not issued and delivered to Fidelity the income bonds and stock to be distributed to the holders of $42,550. of Fidelity's non-negotiable receipts listed on Fidelity's requisition as above more particularly stated.

(c) They have not paid cash to Fidelity for the account of the parties entitled thereto in an amount sufficient to cover the reasonable reorganization expenses.

(d) They have failed to pay all other debts justly owed by Pioche Consolidated by the issuance and delivery of income bonds, income notes and stock or otherwise.

That the amount of such other debts as of July 8, 1942 is shown in two certificates by Dewey O. Simon, public accountant and auditor of Ely, Nevada, both dated November 7, 1943; the first showing the amount in principal only of all liabilities of Pioche Consolidated other than debentures, and the second showing the amount in principal only of all debts of Pioche Mines Company. Appended to these certificates is a third certificate signed by John Janney, President, and E. G. Woods, Secretary of Pioche Consolidated and Pioche Mines Company, showing the additional outstanding obligations as of said date not reflected on the books of Pioche Consolidated, that the original counterpart of said certificates is attached hereto marked Exhibit "C".

(e) Pioche Consolidated has not paid E. W. Clark & Co. $2,000. plus interest at the rate of 6% per annum from September 1, 1937, in payment of Pioche Consolidated's collateral note held by that firm, said note being one of the outstanding obligations shown on Dewey O. Simon's certificate above referred to.

Fidelity's non-negotiable receipt for $40,000. of deposited debentures (separate and distinct from the non-negotiable receipt for a similar amount de-

scribed in paragraph V on page 8) is held by E. W. Clark & Co., as collateral for said note. No income bonds are provided for in the Settlement Agreement or the Merger Agreement to be issued to the holder of this non-negotiable receipt which must be retired before or contemporaneously with the performance of other obligations, the discontinuance of the law suit and the distribution of the income bonds, income notes and stock of the surviving company held by Fidelity as depositary.

(f) Pioche Consolidated has failed to pay or provide for the expenses and reasonable fees of Fidelity for its services as trustee under the two trust agreements and its services as depositary under the Debenture Holders Agreement.

(g) Pioche Consolidated (surviving corporation) has failed immediately after the consummation of the merger to issue income bonds, income notes and preference notes as provided in the Merger Agreement in Article Seventh.

XIII. Fidelity has not been advised to what extent, if any, the other obligations assumed by defendants have been performed and therefore avers that to the best of its knowledge and belief

(a) John Janney has not vested title to the Mill site and other properties held in trust by him including a lease of the office building in Pioche Consolidated, the surviving company.

(b) John Janney has not delivered stock of the Nevada Volcano Mines Company held by him in the Nevada Volcano trust free and clear of the trust to Pioche Consolidated.

(c) Defendants have not issued and delivered $35,000. face amount of income notes to the attorneys for Pioche Consolidated, Pioche Mines Company and John Janney including Clarence M. Hawkins, attorney for Pioche Consolidated who is one of the creditors shown in Dewey O. Simon's certificate, paragraph XII (d) above, and who on or about April 11, 1945, filed a petition in this case claiming a fee in large amount to be due to him by Pioche Consolidated.

(d) Pioche Consolidated, surviving company, has not issued certificates for common stock of the par value of $1. per share in exchange for the outstanding $5. certificates share for share in accordance with the Settlement and Merger Agreements.

(e) Pioche Consolidated has not issued and sold 6% Five Year Preference notes together with bonus shares of the reclassified $1. par shares in face value equal to all new moneys required to pay the reasonable reorganization expenses which must be paid in cash in order to consummate the reorganization, although it has represented that cash will be required in settling accounts to be paid in cash as well as for certain expenses of reorganization, that the Settlement Agreement provides for these cash requirements by an issue of Preference notes and these notes to the extent necessary will be taken by less than ten of the company's stockholders.

(f) Defendants have failed to negotiate and obtain a long-term lease of the properties of surviving company under the terms of which an income would be assured to the new company as provided in the

Settlement Agreement and more particularly in Mr. Janney's letters.

XIV. That the partial performance of the Settlement Agreement by the parties has unalterably changed the relations of the parties to each other and to the enterprise and further delay in the consummation of the reorganization will jeopardize the interest of all concerned.

XV. That during the summer of 1943 Messrs. Hartshorn & Walter, 50 Congress Street, Boston, Mass., accountants, were engaged by Pioche Consolidated to audit its books and accounts, that a member of that firm went to Pioche for the purpose and both Fidelity and the Debenture Holders Committee furnished it with desired information on request.

That Pioche Consolidated has not delivered to Fidelity or Debenture Holders Committee any certificate showing the outstanding obligations of Pioche Consolidated after the merger or any balance sheet of Pioche Consolidated as of a date subsequent to the merger or any report of any kind made by Hartshorn and Walter or other accountants showing the financial condition of Pioche Consolidated after the merger.

XVI. Attached hereto are

(a) Copy of authorization from debenture-holders referred to in Article Seventh of the Debenture Holders Agreement duly certified by Fidelity as a correct copy marked Exhibit "D".

(b) Copy of Debenture Holders Agreement certified by Fidelity as a true and correct copy of said agreement dated as of February 1, 1939.

Wherefore, Plaintiffs pray:

I. This Court enter its order or orders directing defendants to produce a balance sheet of Pioche Consolidated showing the assets and liabilities of said company as of a recent date, or in the alternative

A report or reports of Hartshorn and Walter or other public accountant of good standing showing the status of the financial affairs of said company as of a recent date.

II. This Court enter its order or orders directing defendants to disclose the extent, if any, to which they have performed the other obligations enumerated in Article XIII of this Supplemental Complaint.

III. This Court enter its order or orders directing that the parties to this action perform the remaining unperformed obligations imposed upon them respectively by the Settlement and Merger Agreements and other documents above set forth at such times and in such manner as the Court shall direct.

IV. That plaintiffs, and each of them, have such other and further relief in the premises as may be just and proper and as circumstances of the case may in equity require.

THATCHER & WOODBURN,
/s/ By GEO. B. THATCHER,

CLARK, HEBARD & SPAHR,
/s/ By PERCY H. CLARK,

EXHIBIT "A"

Pioche Mines Consolidated, Inc.
Pioche, Nevada

SETTLEMENT AGREEMENT

Memorandum of Proposed Agreement to Reorganize Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, Either by Merger or Consolidation or Through Judicial Reorganization Proceedings.

This Memorandum of Agreement, entered into as of the 8th day of July, 1942, by and between John Janney and Richard K. Baker, representing themselves as unsecured creditors of Pioche Mines Consolidated, Inc. and Pioche Mines Company, and representing themselves as stockholders of Pioche Mines Consolidated, Inc. (hereinafter designated as the "Creditors' Committee"), Percy H. Clark, Robert F. Holden and Albert P. Gerhard, representing a majority of the deposited debenture bonds of Pioche Mines Consolidated, Inc., and also representing themselves as stockholders of Pioche Mines Consolidated, Inc. (hereinafter designated as the "Debenture Holders Committee"), Pioche Mines Consolidated, Inc., and Pioche Mines Company:

Witnesseth:

Whereas, it is the desire of all parties hereto, as speedily as possible, to accomplish a reorganization of Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, so that the properties of these companies may, at the

Exhibit "A"—(Continued)

earliest possible moment, be turned into an enterprise profitable to the creditors and stockholders of the above mentioned companies,

Now, Therefore, for the purpose of achieving the above purpose, the undersigned have agreed to the following general plan of reorganization;

1. A new company, which will, either at the time of the reorganization or immediately thereafter, be vested with title to the properties of the above mentioned companies and also with certain properties hereinafter defined, now held in trust by John Janney, will issue the following securities upon the following basis:

(A) Income bonds having a maturity date thirty (30) years from the date of issue, shall be issued in face amount equal to

(1) the principal of the company's present outstanding debenture bonds (not including any debentures which the Consolidated Company shall surrender to the trustee for cancellation);

(2) the principal of all other debts justly owed by the company, as certified by Mr. Woods and an independent accountant (except amounts owed to Pioche Mines Company and included in the notes to be issued to emergency creditors, as stated below).

There is specifically included as a debt justly owed by the company, the following:

(a) Claim of Richard K. Baker for breach of written contract giving him the exclusive right to sell stock of the company, settled for $25,000 principal of income bonds. Mr. Baker, as a part of the settle-

Exhibit "A"—(Continued)

ment, waives all claims to interest on advances which he has from time to time made and agrees to take his pro rata share of stock as one of the general creditors, as provided below.

(B) Preference notes payable five (5) years after date, but callable at any time at par, plus accrued interest, bearing interest at the rate of six per cent. (6%), shall be issued in face amount equal to all new moneys furnished to pay the reasonable reorganization expenses which must be paid in cash and which are more specifically defined below.

(C) Income notes having a maturity of thirty (30) years from their date shall be issued in face amount equal to the principal amounts owed

(1) to emergency creditors, as hereinafter defined;

(2) for reasonable reorganization expense, not paid in cash, or preference notes, as provided in paragraph VI of this agreement.

The term "emergency creditors" herein referred to means creditors who have a claim upon the assets of Pioche Mines Company, principally those who have loaned money to Pioche Mines Company to enable that company, in turn, to loan money to the Consolidated Company, which money was urgently needed in order to maintain the Consolidated Company. The total amount owing to emergency creditors shall not exceed $200,000. Without limiting the foregoing, the following items shall be included in the definition of emergency creditors:

First. Claims of Mr. John Janney arising out of sums of money expended for the account of or for

Exhibit "A"—(Continued)

the benefit of the Pioche Mines Company, settled for the sum of $12,000, to be paid in notes. This payment also settles all claims of the Exploration Syndicate arising out of certain resolutions of the Pioche Mines Company and closes the Syndicate accounts with the Pioche Mines Company; and also with Pioche Mines Consolidated, Inc., if there be any such account with that company. As part of this settlement, Mr. Janney will, with the consent of, and the approval of the reorganization plan by the Pioche Mines Company stockholders, deed the mill site property, free and clear of any trust, to the new company. He will also execute a 10-year lease to the new company covering the property known as the office building, which lease shall give the new company the right to use the office building, subject only to the right of Mr. Janney to use the building to the same extent to which he has heretofore so used it; the rental shall be at the nominal rate of $1.00 per year. As part of the settlement, Mr. Janney agrees to take his pro rata share of stock as one of the general creditors, as provided below, with respect to any interest on advances made by him to either Pioche Mines Company or the Consolidated Company, except that no interest shall be payable with respect to the sum of $12,000 principal involved as above stated in the settlement.

Second. To the extent that cash payment is not made, amounts of back salary due to Messrs. Grubbs, Hunt and Woods, which are not to exceed in the aggregate the sum of $12,950;

Third. Recent loans made to maintain the Pioche

Exhibit "A"—(Continued)

Mines and Consolidated Company from April 30, 1942 to date, when the reorganization shall be concluded;

Fourth. Outstanding notes given to secure cash advances in the nature of bank loans in so far as it is not necessary to pay such notes in cash or preference notes. These notes not to exceed the sum of $15,000.

With respect to reasonable reorganization expenses, referred to in B. and C. (2) supra, it is agreed that such expenses shall include, in addition to the reasonable fee and disbursements for the debenture trustee, the reasonable disbursements of the Debenture Holders Committee, all other expenditures (not paid for by new moneys furnished to the corporation or by preference notes) in connection with the litigation pending in the United States Court for the District of Nevada and in connection with the proposed reorganization. The attorneys for the Fidelity-Philadelphia Trust Company and Debenture Holders Committee are to receive $35,000 face amount of income notes, and the attorneys for the Pioche Mines and Consolidated companies and Mr. John Janney are to receive a like amount in income notes. The $35,000 face amount of income notes to be paid as fees to the attorneys for Fidelity-Philadelphia Trust Company and Debenture Holders Committee, together with the 55% of 47½% of common stock to be issued to the Debenture Holders as provided in I D. (2) hereof, shall be delivered to Fidelity-Philadelphia Trust Company, as trustee under the trust

Exhibit "A"—(Continued)

agreements under which the debentures are outstanding for the account of the debenture holders, and in consideration of these payments Pioche Mines Consolidated, Inc. and Pioche Mines Company shall be released from all obligation for the payment of legal fees to said attorneys on account of services rendered to Fidelity-Philadelphia Trust, Pioche Mines Company, and to said companies down to the date of the consummation of the proposed reorganization and lease.

(D) Common stock of the company, having a nominal par value, shall be issued so that, after the reorganization is completed,

(1) 47½% of the outstanding common stock will be for common stock of the Consolidated Company and the stock of Pioche Mines Company and Nevada Volcano Mines Company, not held by the Consolidated Company or John Janney as trustees, in proper proportion; and

(2) 47½% shall be issued to all creditors of Consolidated Company and Pioche Mines Company, including, but not by way of limitation, the present debenture holders and the emergency creditors, in such proportion that 55% of said 47½% of the common stock of the new company shall be issued to Fidelity-Philadelphia Trust Company for the account of the debenture holders. This issue of stock, together with the issue of the income bonds above provided for in I A., shall discharge all claims of the debenture holders for both principal and interest; and 45% of said 47½% of said stock shall be issued

Exhibit "A"—(Continued)

to all other creditors of the Consolidated Company and the Mines Company. This issue of stock, together with the issue of income bonds or income notes, as above provided, shall discharge all claims of the other creditors for both principal and interest; and

(3) 5% shall be available to be issued to the preference note holders as an inducement to furnishing the new moneys required by the new company.

II. The notes and bonds shall contain the usual provisions for such instruments and shall contain the following special provisions:

(A) Interest shall be payable upon the new income bonds and upon the new notes up to 4%, but only as earned; the directors to determine annually whether the new company, within the meaning of these clauses, has realized earnings. Proper provision should, however, be made so that the payment of interest can in fact be treated as interest for income tax purposes. Both the bonds and notes shall be callable at any time at par. Both the bonds and the notes shall share in a sinking fund, which is hereinafter described. Until all of the notes are retired, however, 50% of the sinking fund must each year be applied to the retirement of notes and 50% to the retirement of bonds. Sinking Fund may be used to buy bonds and notes at lowest price offered by any holders, or to retire notes and bonds at par, by lot.

III. Any income received by the new company shall first be applied to paying interest on the preference notes; thereafter any income received by the

Exhibit "A"—(Continued)

new company over and above operating expenses shall be used as follows:

(A) At the end of each designated fiscal year, the directors shall determine the amount of net earnings above operating expenses. This determination shall be made according to standard accounting practice but, irrespective of such practice and irrespective of accounting practices necessary in connection with tax purposes, the following items shall, for the purpose of the determination in this paragraph specified, be included as operating expenses (1) until all preference notes have been retired, interest and principal payments on the preference notes, (2) after all preference notes have been retired, a reserve for depletion in the sums permitted under United States income tax practice, (3) sums necessarily expended for the maintenance and repair of the property of the corporation. Any sum or sums expended in capital improvements shall not be included in operating expenses. Out of the amount which the directors shall so determine to be such net earnings, and after providing for payment of taxes, there shall first be paid interest not to exceed 4% on the bonds and notes, both issues to share pro rata in the available fund.

(B) After paying and providing for operating expenses, as above defined, and 4% interest on the notes and bonds, as above provided, and after making proper provision for the payment of all income and excess profits taxes and all other tax obligations of the company, the company shall then pay annually into a sinking fund 33⅓% of such balance of net

Exhibit "A"—(Continued)

earnings, and no dividend shall be declared and paid unless such sum has first been paid into such sinking fund, provided, however, that no dividend and sinking fund payments shall be made until an operating reserve fund of $25,000 (which shall include amounts, on hand, set aside for depletion) shall have been accumulated.

IV. The stock of the Nevada Volcano Mines Company held by Mr. John Janney in the Nevada Volcano Trust shall be delivered free and clear of the Trust to the new company resulting from the reorganization, with the consent of the Pioche Mines Company stockholders.

V. It is the purpose of the reorganization ultimately to vest title in one company of all of the properties of the Pioche Mines Consolidated Company, the Pioche Mines Company and the Nevada Volcano Mines Company. This result is to be accomplished in a manner which shall seem most expedient to the attorneys for all parties concerned. It shall not be material from the point of view of the parties consenting to this agreement whether the reorganization is accomplished through statutory merger and consolidation, through judicial reorganization under the federal laws, or otherwise.

VI. The parties hereto realize that it will be necessary to obtain certain sums in cash in order to consummate the proposed reorganization. All parties hereto agree to use their best efforts to obtain such cash in exchange for preference notes with stock

Exhibit "A"—(Continued)

bonus as above provided. The cash so obtained is to be used only to pay expenses which must be paid for in cash such as court fees, filing fees, recording fees, transfer, issue stamp and other taxes; all disbursements of attorneys for Fidelity Philadelphia Trust Company, the Debenture Holders Committee, the Creditors' Committee and attorneys of record in the Nevada litigation, and any proper wage or salary claims of Messrs. Grubbs, Hunt and Woods in so far as they demand cash payment. The cash or preference notes may be used, in so far as necessary, to repay the cash advances referred to in I C. Fourth hereof.

VII. The Debenture Holders Committee represents that it is acting under authorization from a majority of the deposited debenture holders, dated June 8, 1942, a true copy of which is annexed hereto as Exhibit "B", and that it is further acting by virtue of a Debenture Holders' Agreement dated February 1, 1939, which is made a part hereof by reference and which empowers the Debenture Holders Committee to negotiate with the Pioche Company, its creditors, stockholders and others interested, an arrangement in the nature of a reorganization or settlement for the purpose of avoiding or terminating litigation and such arrangement or settlement so negotiated shall be binding upon the holders of debentures and scrip (or overdue coupons) who shall have signed this agreement or deposited their debentures and scrip (or overdue coupons) hereun-

Exhibit "A"—(Continued)

der, when approved by the holders of a majority of the aggregate principal amount of the outstanding debentures. The Debenture Holders Committee warrants, by its signature hereto, that it has obtained the authority to bind a majority of the deposited debentures. The Debenture Holders Committee agrees to use its best efforts to obtain the consent of all of the undeposited debentures and all of the stockholders, who are deposited or undeposited debenture holders, to this plan or reorganization.

VIII. The Creditors' Committee represents that by executing this agreement, it is giving the consent of Mr. John Janney and Mr. Richard K. Baker to this agreement, and the Creditors' Committee will use its best efforts to obtain the consent to this agreement of the directors of Pioche Mines Consolidated, Inc. and Pioche Mines Company, and of all of the creditors of any of the companies herein involved, exclusive of the deposited debenture holders, and to obtain the consent of all of the stockholders of any of the companies involved, except such stockholders as are also holders of deposited debentures. It is understood that after this agreement has been approved by the Debenture Holders Committee, Mr. Richard K. Baker will forthwith use his best efforts to obtain the consent to this agreement from the emergency creditors and creditors other than the deposited debenture holders, and that Mr. Janney will use his best efforts to obtain a consent to this agreement from the stockholders of the companies herein involved

Exhibit "A"—(Continued)

and of the non-deposited debenture holders and other creditors. Immediately upon obtaining the consent of a majority of the Boston creditors, Mr. Richard K. Baker agrees either to sign the first endorsement hereof, as a representative of such majority, or to obtain a representative of such majority to sign said endorsement. Likewise, Mr. Janney, upon obtaining a consent of the majority of the stockholders involved, agrees to sign the second endorsement hereof, as representative of such majority, or agrees to obtain the signature of a representative of such majority.

IX. All of the parties hereto agree that it will be in the best interests of the new company to negotiate and obtain a long term lease of the properties of the new company under the terms of which an income will be assured to the new company. All parties hereto agree to use their best efforts to obtain for the new company such a lease which, by its terms, will be profitable to the new company.

X. It is agreed that the holders of the income bonds shall be entitled to a representative upon the board of directors of the new company by a method of selection hereafter to be agreed upon.

XI. The suit brought by the Trustee under the Pioche Mines Consolidated Trust Agreement for the company's debentures, against Pioche Mines Consolidated, Inc. and others, now pending, shall be discontinued by all parties without costs in time to consummate the reorganization for which provision is

Exhibit "A"—(Continued)

herein made. In the meantime, said suit shall not be brought on for trial by any party.

XII. The first endorsement herein is to be executed within ten (10) days after the signature hereof by the Debenture Holders Committee and the Creditors' Committee.

XIII. This agreement shall be binding in all respects upon the Debenture Holders Committee and the Creditors' Committee when the first endorsement is signed, even though the corporate parties hereto have not executed this agreement, provided that each of the corporate parties secures the authority of its board of directors and does execute this agreement within thirty (30) days after the signing of the first endorsement hereof.

XIV. The second endorsement herein is to be executed within sixty days (60) days after the signing of the first endorsement.

XV. If within ninety (90) days after the signature hereof by the first endorser the Creditors' Committee has not obtained the written consent hereto of 80% of all creditors (other than deposited debenture holders) of the Pioche Consolidated and Pioche Mines Company, then the Debenture Holders Committee may withdraw from this agreement.

XVI. If within ninety (90) days after the signature hereof by the first endorser, the Creditors' Committee has not obtained the written consent (in form of proxies or otherwise) of 66-2/3% of all Pioche

Exhibit "A"—(Continued)

Consolidated stockholders, then the Debenture Holders Committee may withdraw from this agreement.

In Witness Whereof, the undersigned have hereunto set their hands and seals as of the date written opposite their respective signatures.

July 16, 1942 JOHN JANNEY (L.S.)

July 16, 1942 RICHARD K. BAKER (L.S.)

July 8th, 1942 PERCY H. CLARK (L.S.)

July 8th, 1942 ROBERT F. HOLDEN (L.S.)

July 8th, 1942 ALBERT P. GERHARD (L.S.)

Aug. 7th, 1942 PIOCHE MINES COMPANY

Attest: by John Janney
E. G. Woods, Secretary President.
(Corporate Seal)

Aug. 7, 1942 PIOCHE MINES CONSOLIDATED, INC.,

Attest: by John Janney
E. G. Woods, Secretary President.
(Corporate Seal)

First Endorsement

I, Richard K. Baker, being duly authorized to represent a majority of creditors known as the Boston group of creditors, hereby, on behalf of myself and on their behalf, approve of the above agreement.

July 23, 1942 RICHARD K. BAKER (L.S.)

Exhibit "A"—(Continued)

Second Endorsement

I, John Janney, being duly authorized to represent a majority of the stock of Pioche Mines Consolidated, Inc., a majority of the stock of Pioche Mines Company, and a majority of the stock of Nevada Volcano Mines Company, hereby, on behalf of myself and on their behalf, approve of the above agreement.

Sept. 18, 1942 JOHN JANNEY (L.S.)

EXHIBIT "B"

Office of Malcolm McEachin, Secretary of State

The State of Nevada—Department of State

I, Malcolm McEachin, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the annexed is a true, full and correct transcript of the original Merger Agreement between Pioche Mines Consolidated, Inc., as the surviving corporation merging Pioche Mines Company and Nevada Volcano Mines Company into the surviving corporation and reducing authorized capital stock of the surviving corporation to 5,000,000 shares of $1.00 par value of $5,000,000.00 as the same appears on file and of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office in Carson City, Nevada, this 20th day of January, A.D. 1944.

[Seal] /s/ MALCOLM McEACHIN,
Secretary of State.
/s/ By MURIEL LITTLEFIELD,
Deputy.

Exhibit "B"—(Continued)

MERGER AGREEMENT

This Agreement of Merger made this 23rd day of October, 1942, by and between Pioche Mines Consolidated, Inc., hereinafter designated as Surviving Corporation, Pioche Mines Company, hereinafter designated as Mines Company and Nevada Volcano Mines Company, hereinafter designated as Volcano Company, all having their principal offices in the Town of Pioche, County of Lincoln, State of Nevada, all Nevada corporations, acting by and with the approval of a majority of the directors of each said corporations.

Witnesseth:

Whereas, Surviving Corporation has an authorized capital stock of Two Million Five Hundred Thousand (2,500,000) shares of common stock with a par value of Five Dollars ($5.00) each of which Two Million Twenty-Two Thousand Three Hundred Forty (2,022,340) shares are now issued and outstanding; and

Whereas, Mines Company has an authorized capital stock of One Million (1,000,000) shares of common stock with a par value of Five Dollars ($5.00) each, of which Nine Hundred Ninety-Nine Thousand Two Hundred Thirty-One (999,231) shares are now issued and outstanding; and

Whereas, Volcano Company has an authorized capital stock of One Million (1,000,000) shares of common stock with a par value of One Dollar ($1.00) each of which Six Hundred Nine Thousand Six Hundred and Eleven (609,611) shares are now issued and outstanding; and

Exhibit "B"—(Continued)

Whereas, the directors, or a majority of them, of each of the above named corporations, desire to merge Mines Company and Volcano Company into Surviving Corporation on the terms and conditions and in the mode, manner and basis hereinafter set forth and meetings of the stockholders of the respective corporations are being called for the purpose of considering and taking action upon this Agreement of Merger;

Now, Therefore, pursuant to the laws of the State of Nevada in such case made and provided, the parties hereto, in consideration of the mutual covenants and agreements hereinafter contained, do hereby agree to merge and do merge Mines Company and Volcano Company into surviving corporation, on the terms and conditions and in the mode, manner and basis hereinafter set forth, to wit:

First: The name of the Surviving Corporation shall continue to be Pioche Mines Consolidated, Inc.

Second: The number of Directors who shall manage its affairs shall be seven.

Third: The names and post office addresses of the Directors of such corporation for the first year are as follows:

John Janney, Pioche, Nevada.
A. C. Milner, Salt Lake City, Utah.
Morgan G. Heap, Pioche, Nevada.
J. Harry Crafton, Staunton, Va.
E. G. Woods, Pioche, Nevada.
Augustus L. Putnam, Boston, Mass.
Robert F. Holden, Philadelphia, Pa.

Exhibit "B"—(Continued)

Fourth: The amount of the total authorized capital stock is hereby changed from 2,500,000 shares of the par value of $5.00 each or a total of $12,500,000, to 5,000,000 shares of the par value of $1.00 each or a total par value of $5,000,000, full paid and non-assessable.

Fifth: The value of the properties owned by Surviving Corporation as of the date of this Agreement are hereby declared to be of a value at least equal to the face value of the bonds and notes plus the par value of the stock of Surviving Corporation authorized hereunder.

Sixth: The reduction of the capital stock of Surviving Corporation, above provided for, shall be accomplished as follows:

A. The 477,660 shares of authorized stock of Surviving Corporation of the par value of $5.00 each held unissued in the Treasury at the time this merger becomes effective, shall be cancelled.

B. All of the shares of the par value of $5.00 each of Surviving Corporation, issued and outstanding, prior to the consummation of this merger, shall be reclassified into 5,000,000 shares of the par value of $1.00 each in the manner provided by the laws of the State of Nevada and shall be disposed of as follows:

1. 2,022,340 of the reclassified shares of the par value of $1.00 each shall be issued to existing shareholders in exchange—(a) share for share for the old shares of Surviving Corporation, surrendered for reclassification as above, that is a total of 1,877,-

Exhibit "B"—(Continued)

421 shares, and (b) outstanding shares of Mines Company and Volcano Company not exchanged for shares of Surviving Corporation prior to this merger, and therefore not owned by that company, at the following rates of exchange:

Shareholders of Mines Company who have heretoaccepted the Volcano Trust and thus acquired an interest in Volcano shares, shall receive one reclassified share of Surviving Corporation for each such Mines Company share surrendered in exchange.

Shareholders of Mines Company who have not heretofore accepted the Volcano Trust shall receive one-half of a reclassified share of Surviving Corporation for each such Mines Company share surrendered.

Shareholders of Volcano Company shall receive one-half of a reclassified share of Surviving Corporation for each such Volcano Company share surrendered.

This subdivision (b) of subdivision 1. will require the issue of no more than 144,919 reclassified shares of Surviving Corporation.

2. 1,112,287 of the reclassified shares of the par value of $1.00 each shall be issued to existing debenture holders in such names as Fidelity Philadelphia Trust Company (Trustee under trust agreements dated January 2, 1929 and October 1, 1930, under which debentures of Surviving Corporation are outstanding) shall direct and be delivered to Fidelity Philadelphia Trust Company for the account of the outstanding debentures.

3. 910,053 of the reclassified shares of the par

Exhibit "B"—(Continued)

value of $1.00 each shall be issued to the existing creditors of Surviving Corporation, and Mines Company, other than debenture-holders.

4. 212,878 of the reclassified shares of the par value of $1.00 each shall be issued as part consideration to those persons who provide the cash not to exceed $100,000.00 required for certain expenses which are to be paid in cash, all in accordance with the settlement agreement elsewhere referred to in this Agreement of Merger.

5. 742,442 of the reclassified shares of the par value of $1.00 each will remain in the Treasury and may be disposed of from time to time as may be permitted by law and as directed by the Board of Directors of Surviving Corporation for treasury purposes.

6. Stockholders of Surviving Corporation, Mines Company and/or Volcano Company shall surrender and return the certificates of stock of the respective corporations to Surviving Corporation and upon such presentation and surrender and not otherwise shall be entitled to receive the reclassified shares of stock of Surviving Corporation in the amounts above provided.

Seventh: All creditors who relinquish their debts and surrender debentures, notes and other obligations of Pioche Mines Consolidated, Inc., and Pioche Mines Company, as hereinafter provided, are obligated to accept in full payment of all such debts and obligations stock and securities of surviving corporation as hereinbefore and hereinafter provided.

Exhibit "B"—(Continued)

Accordingly it is agreed that Surviving Corporation immediately after the consummation of the merger shall issue the following securities:

1. Income bonds in the face amount not to exceed One Million Two Hundred Thousand Dollars ($1,200,000), the principal of which shall be due thirty years from the date of issue, bearing 4% interest payable annually, payment in each year to be made only if earned and to be non-cumulative, callable at par or subject to lowest bid offer as hereinafter provided. Said bonds shall be registered and shall be transferable only on the books of Surviving Corporation and may be in denomination of $100, $500, $1,000 and $10,000. Said bonds may be issued for the following considerations:

(a) Outstanding debentures of Surviving Corporation at face amount of such debentures, i.e., $602,050.

(b) The principal amount of other debts owed by Consolidated, estimated not to exceed $471,655.40.

2. Income notes in the face amount not to exceed $340,000. the principal of which shall be due thirty years from the date of issue, bearing 4% payable annually, payment in each year to be made only if earned, and to be non-cumulative, said notes to be callable at par, or subject to lowest bid offer as hereinafter provided. Said notes shall be registered and shall be transferable only on the books of Surviving Corporation and may be in denominations of $100,

Exhibit "B"—(Continued)

$500, $1,000, and $10,000. Said notes may only be issued for the following considerations:

(a) The principal amount of Mines Company obligations estimated not to exceed $200,000.

(b) Reasonable reorganization expenses and expenses of all parties to the litigation in the United States District Court for the District of Nevada which is to be settled as provided in a certain Agreement between Surviving Corporation, Mines Company and a representative of a majority of the bondholders and the principal active creditors dated July 8, 1942, and herein referred to as the Settlement Agreement, estimated not to exceed the sum of One Hundred Thousand Dollars ($100,000).

(c) Certain other obligations estimated not to exceed Forty Thousand Dollars ($40,000) more particularly described in said Settlement Agreement, part of which it may prove desirable to pay in cash.

3. In order to meet cash requirements for such expenses as must be met in cash incident to the reorganization and other necessary expenses, as provided in the Settlement Agreement, the surviving Corporation is authorized to issue 6%, 5-year notes in aggregate amount not to exceed $100,000.00, to provide for such necessary cash requirements, which notes shall be called preference notes, and shall be subject to the preference hereinafter provided for in this contract.

4. The income bonds and income notes herein-

Exhibit "B"—(Continued)

above provided for shall have equal standing with respect to interest and in the event the Surviving Corporation should not in any year have earnings, as hereinafter in Paragraph Ninth defined, sufficient to pay interest in full on both the income bonds and income notes, the amount of income available, if any, shall be divided among the holders of both such issues in proportion to face amount of such bonds and notes held by each of them respectively.

Eighth: The notes and bonds above provided for, shall contain the usual provisions for such instrument and shall contain the following provisions:

(a) Interest shall be payable upon the new income bonds and upon the new notes up to 4%, but only as earned, the directors to determine annually whether the new company, within the meaning of these clauses, has realized earnings. Proper provisions should, however, be made so that the payment of interest can in fact be treated as interest for income tax purposes. Both bonds and notes shall be callable at par, at any time, or shall be subject to the lowest bid offered. Both the bonds and notes shall share in a sinking fund, which is hereinafter described. Until all the notes are retired, however, 50% of the sinking fund must each year be applied to the retirement of notes and 50% to the retirement of bonds. Sinking fund may be used to buy bonds and notes at lowest price offered by the holders, or to retire notes and bonds at par by lot.

Ninth: Any income received by the Surviving Cor-

Exhibit "B"—(Continued)

poration shall first be applied to paying interest on the preference notes; thereafter any income received by the Surviving Corporation over and above operating expenses shall be used as follows:

(a) At the end of each designated fiscal year, the directors shall determine the amount of net earnings above operating expenses. This determination shall be made according to standard accounting practice but, irrespective of such practice and irrespective of accounting practices necessary in connection with tax purposes, the following items, shall for the purposes of the determination in this paragraph specified, be included as operating expenses (1) until all preference notes have been retired interest and principal payments on the preference notes, (2) after all preference notes have been retired, a reserve for depletion in the sums permitted under United States income tax practice, (3) sums necessarily expended for the maintenance and repair of the property of the corporation. Any sum or sums expended in capital improvement shall not be included in operating expenses. Out of the amount which the directors shall so determine to be such net earnings, and after providing for payment of taxes, there shall first be paid interest not to exceed 4% on the bonds and notes, both issues to share pro rata in the available fund.

(b) After paying and providing for operating expenses, as above defined and 4% interest on the notes and bonds, as above provided, and after making proper provisions for the payment of all income and

Exhibit "B"—(Continued)

excess profits taxes and all other tax obligations of the company, the Surviving Corporation shall then pay annually into a sinking fund 33⅓% of such balance of net earnings, and no dividend shall be declared and paid unless such sum has first been paid into such sinking fund, provided, however, that no dividend and sinking fund payments shall be made until an operating reserve fund of $25,000.00 (which shall include amounts on hand set aside for depletion) shall have been accumulated.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in their respective names by their respective officers and have caused their respective seals to be affixed hereto, and a majority of the directors of Pioche Mines Consolidated, Inc., and a majority of the directors of Pioche Mines Company, and a majority of the directors of Nevada Volcano Mines Company, have signed this Agreement of Merger under their respective corporate seals as of the day and year first above written.

[Seal] JOHN JANNEY
W. A. TULLOCH
MORGAN G. HEAP
E. G. WOODS
ALFRED HUNT

Attest:

E. G. WOODS, Secretary,
Pioche Mines Consolidated, Inc.

Being a Majority of the Directors of Pioche Mines Consolidated, Inc.

Exhibit "B"—(Continued)

[Seal] JOHN JANNEY
W. A. TULLOCH
MORGAN G. HEAP
E. G. WOODS
ALFRED HUNT

Attest:

E. G. WOODS, Secretary,
Pioche Mines Company

Being a Majority of the Directors of Pioche Mines Company.

[Seal] JOHN JANNEY
A. W. THOMAS
ALFRED HUNT
CHAS. CULVERWELL
MORGAN G. HEAP

Attest:

E. G. WOODS, Acting Assistant Secretary,
Nevada Volcano Mines Company.

Being a Majority of the Directors of Nevada Volcano Mines Company.

SECRETARY'S CERTIFICATE

I, E. G. Woods, Secretary of Pioche Mines Consolidated, Inc., a corporation of the State of Nevada (hereinafter called Surviving Corporation), do hereby certify as such Secretary and under the seal of said corporation, in accordance with the provisions of Section 39 of the Domestic Corporation Law, as amended, and other applicable laws of the State of Nevada:

The foregoing Agreement of Merger between Sur-

Exhibit "B"—(Continued)

viving Corporation, Pioche Mines Company and Nevada Volcano Mines Company, providing that Pioche Mines Company and Nevada Volcano Company shall be merged into Surviving Corporation, after having been first duly signed by a majority of the directors of Surviving Corporation, by a majority of the directors of Pioche Mines Company and by a majority of the directors of Nevada Volcano Company was submitted to the stockholders of Surviving Corporation, at a meeting thereof called separately from any meeting of the stockholders of either of the other merged corporations and duly called and held after notice given in accordance with the provisions of said General Corporation Law of the State of Nevada, for the purpose of considering and taking action upon said Agreement of Merger:

The only class of authorized capital stock of Surviving Corporation is voting common stock and at said meeting such Agreement of Merger was considered and a vote by ballot in person or by proxy was taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote and the votes of stock so voting together representing more than a majority of the issued and outstanding shares of Surviving Corporation, were cast for the approval and adoption of said Agreement of Merger.

Said Agreement was thereby at said meeting duly adopted as the act of stockholders of Surviving Corporation.

Exhibit "B"—(Continued)

In Witness Whereof, I have hereunto signed my name and affixed the seal of Pioche Mines Consolidated, Inc., this 17th day of December, 1943.

[Seal] E. G. WOODS, Secretary,
Pioche Mines Consolidated, Inc.

Attest:

E. G. WOODS, Secretary
Pioche Mines Consolidated, Inc.

SECRETARY'S CERTIFICATE

I, E. G. Woods, Secretary of Pioche Mines Company, a corporation of the State of Nevada, do hereby certify as such Secretary and under the seal of said corporation, in accordance with the provisions of Section 39 of the Domestic Corporation Law, as amended, and other applicable laws of the State of Nevada:

The foregoing Agreement of Merger between Surviving Corporation, Pioche Mines Company and Nevada Volcano Mines Company, providing that Pioche Mines Company and Nevada Volcano Mines Company shall be merged into Surviving Corporation, after having been first duly signed by a majority of the directors of Surviving Corporation, by a majority of the directors of Pioche Mines Company and by a majority of the directors of Nevada Volcano Mines Company was submitted to the stockholders of Pioche Mines Company, at a meeting thereof called separately from any meeting of the stockholders of either of the other merged corporations and duly called and held after notice

Exhibit "B"—(Continued)

given in accordance with the provisions of said General Corporation Law of the State of Nevada, for the purpose of considering and taking action upon said Agreement of Merger.

The only class of authorized capital stock of Pioche Mines Company is voting common stock and at said meeting such Agreement of Merger was considered and a vote by ballot in person or by proxy was taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote and the votes of stock so voting together representing more than a majority of the issued and outstanding shares of Pioche Mines Company, were cast for the approval and adoption of said Agreement of Merger.

Said Agreement was thereby at said meeting duly adopted as the act of stockholders of Pioche Mines Company.

In Witness Whereof, I have hereunto signed my name and affixed the seal of Pioche Mines Company, this 20th day of December, 1943.

[Seal] E. G. WOODS,
Secretary, Pioche Mines Company

Attest:
E. G. WOODS, Secretary,
Pioche Mines Company.

SECRETARY'S CERTIFICATE

I, E. G. Woods, Assistant Secretary of Nevada Volcano Mines Company, a corporation of the State

Exhibit "B"—(Continued)

of Nevada, do hereby certify as such Secretary and under the seal of said corporation, in accordance with the provisions of Section 39 of the Domestic Corporation Law, as amended, and other applicable laws of the State of Nevada:

The foregoing Agreement of Merger between Surviving Corporation, Pioche Mines Company and Nevada Volcano Mines Company, providing that Pioche Mines Company and Nevada Volcano Mines Company shall be merged into Surviving Corporation, after having been first duly signed by a majority of the directors of Surviving Corporation, by a majority of the directors of Pioche Mines Company and by a majority of the directors of Nevada Volcano Mines Company was submitted to the stockholders of Pioche Mines Company, at a meeting thereof called separately from any meeting of the stockholders of either of the other merged corporations and duly called and held after notice given in accordance with the provisions of said General Corporation Law of the State of Nevada, for the purpose of considering and taking action upon said Agreement of Merger;

The only class of authorized capital stock of Nevada Volcano Mines Company is voting common stock and at said meeting such Agreement of Merger was considered and a vote by ballot in person or by proxy was taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote and the votes of stock so voting together representing more than a majority of the

Exhibit "B"—(Continued)

issued and outstanding shares of Nevada Volcano Mines Company, were cast for the approval and adoption of said Agreement of Merger.

Said Agreement was thereby at said meeting duly adopted as the act of stockholders of Nevada Volcano Mines Company.

In Witness Whereof, I have hereunto signed my name and affixed the seal of Nevada Volcano Mines Company, this 23rd day of December, 1943.

[Seal] E. G. WOODS,
Assistant Secretary, Nevada Volcano Mines Company.

Attest:
E. G. Woods, Assistant Secretary,
Nevada Volcano Mines Company.

MERGER AGREEMENT EXECUTED

The Above Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, all being corporations duly created, organized and existing under the laws of the State of Nevada, having been duly declared advisable and authorized by the Boards of Directors of each of said corporations, duly executed by a majority of the Boards of Directors of each of said corporations and duly approved and adopted by the stockholders of each of said corporations in accordance with the General Corporation Law of the State of Nevada, the Pres-

Exhibit "B"—(Continued)

ident and the Secretary of each of said corporations do hereby execute said Agreement of Merger under the corporate seals of their respective corporations by authority of the directors and stockholders thereof as the act, deed and agreement of each of said corporations and each of said corporations has caused said Agreement of Merger to be signed in its name and on its behalf by its President and its Secretary, and caused its corporate seal to be thereto affixed and attested by its Secretary.

Done this 24th day of December, 1943.

[Seal] PIOCHE MINES CONSOLIDATED, INC.
By JOHN JANNEY, President
E. G. WOODS, Secretary

Attest:
E. G. WOODS, Secretary.

[Seal] PIOCHE MINES COMPANY,
By JOHN JANNEY, President
E. G. WOODS, Secretary

Attest:
E. G. WOODS, Secretary.

[Seal] NEVADA VOLCANO MINES CO.
By JOHN JANNEY, President
E. G. WOODS, Secretary

Attest:
E. G. WOODS, Secretary.

Exhibit "B"—(Continued)

State of Nevada,
County of Lincoln—ss.

Be It Remembered, that on this 24th day of December, 1943, personally came before me a Notary Public, in and for the County and State aforesaid, John Janney, President of Pioche Mines Consolidated, Inc., a corporation of the State of Nevada, and one of the corporations described in and which executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, all Nevada corporations, who is personally known to me and known to me to be such President and the same person whose name is subscribed to the Agreement of Merger as said President, and acknowledged that said Agreement of Merger was the act, deed and agreement of said Pioche Mines Consolidated, Inc.; that the signatures of said President and Secretary of said corporation to the foregoing Agreement of Merger are in the proper handwriting of said President and Secretary and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office, the day and year aforesaid.

[Seal] GLENDA P. QUIRK,
Notary Public.

Exhibit "B"—(Continued)

State of Nevada,
County of Lincoln—ss.

John Janney being duly sworn deposes and says:

That he is the President of Pioche Mines Consolidated, Inc., a Nevada corporation, who executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, all Nevada Corporations; that the Merger to be effected, in accordance therewith, was duly advised, authorized and approved by the Board of Directors and stockholders of Pioche Mines Consolidated, Inc., in the manner and by the vote required by the laws of the State of Nevada.

JOHN JANNEY

Sworn to and subscribed before me this 24th day of December, 1943.

[Seal] GLENDA P. QUIRK,
Notary Public.

State of Nevada,
County of Lincoln—ss.

Be It Remembered, that on this 24th day of December, 1943, personally came before me a Notary Public, in and for the County and State aforesaid, John Janney, President of the Pioche Mines Company, a corporation of the State of Nevada, and one of the corporations described in and which executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines

Exhibit "B"—(Continued)

Company and Nevada Volcano Mines Company, all Nevada corporations, who is personally known to me and known to me to be such President and the same person whose name is subscribed to the Agreement of Merger as said President, and acknowledged that said Agreement of Merger was the act, deed and Agreement of said Pioche Mines Company; that the signatures of said President and Secretary of said corporation to the foregoing Agreement of Merger are in the proper handwriting of said President and Secretary and that the seal affixed to said Agreement of Merger is the common corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office, the day and year aforesaid.

[Seal] GLENDA P. QUIRK,
Notary Public.

State of Nevada,
County of Lincoln—ss.

John Janney being duly sworn deposes and says:

That he is the President of Pioche Mines Company, a Nevada corporation, who executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, all Nevada corporations; that the Merger to be effected, in accordance therewith, was duly advised, authorized and approved by the Board of Directors and stockholders of Pioche Mines Company, in the manner and

Exhibit "B"—(Continued)

by the vote required by the laws of the State of Nevada.

JOHN JANNEY

Sworn to and subscribed before me this 24th day of December, 1943.

[Seal] GLENDA P. QUIRK,
Notary Public.

State of Nevada,
County of Lincoln—ss.

Be It Remembered, that on this 24th day of December, 1943, personally came before me a Notary Public, in and for the County and State aforesaid, John Janney, President of the Nevada Volcano Mines Company, a corporation of the State of Nevada, and one of the corporations described in and which executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company and Nevada Volcano Mines Company, all Nevada corporations, who is personally known to me and known to me to be such President and the same person whose name is subscribed to the Agreement of Merger as said President, and acknowledged that said Agreement of Merger was the act, deed and agreement of said Nevada Volcano Mines Company; that the signatures of said President and Assistant Secretary of said corporation to the foregoing Agreement of Merger are in the proper handwriting of said President and Assistant Secretary and that the seal af-

Exhibit "B"—(Continued)

fixed to said Agreement of Merger is the common corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and seal of office, the day and year aforesaid.

[Seal] GLENDA P. QUIRK,
Notary Public.

State of Nevada,
County of Lincoln—ss.

John Janney being duly sworn deposes and says: That he is the President of the Nevada Volcano Mines Company, a Nevada corporation, who executed the foregoing Agreement of Merger between Pioche Mines Consolidated, Inc., Pioche Mines Company, and Nevada Volcano Mines Company, all Nevada corporations; that the Merger to be effected, in accordance therewith, was duly advised, authorized and approved by the Board of Directors and stockholders of Nevada Volcano Mines Company, in the manner and by the vote required by the laws of the State of Nevada.

JOHN JANNEY

Sworn to and subscribed before me this 24th day of December, 1943.

[Seal] GLENDA P. QUIRK,
Notary Public.

[Endorsed]: Merger Agreement Between Pioche Mines Consolidated, Inc., as the Surviving Corporation merging Pioche Mines Company and Nevada

EXHIBIT "B"—(Continued.)

Volcano Mines Company into the Surviving Corporation and reducing authorized capital stock of the Surviving Corporation to 5,000,000 shs. of $1.00 par value or $5,000,000.00.

Filed at the request of John Janney, Pres., Pioche Mines Consolidated, Pioche, Nevada, Dec. 27, 1943. Malcolm McEachin, Secretary of State. By Muriel Littlefield, Deputy Secretary of State.

EXHIBIT "D"

[Printer's Note: Pertinent portions of Exhibit "D" entitled "Pioche Debenture-Holders' Agreement dated as of February 1, 1939" are set out at pages 98-111 as Exhibit "J" to Original Complaint.]

[Endorsed]: Filed May 16, 1946.

[Title of District Court and Cause.]

MORE DEFINITE STATEMENT

Comes Now plaintiffs and furnish a more definite statement of those matters in its supplemental complaint, pursuant to the order of this Court entered on the 11th day of February, 1947.

1. The words "John Janney's Group" as used in line 29, page 6 of plaintiffs' supplemental complaint refer to those debenture holders who have not deposited their debentures. Messrs. John E. Zimmermann, Percy H. Clark, after visiting Pioche in October, 1928, interested some of their friends in subscribing to Pioche debentures of the 1929 issue

to an amount in excess of Two hundred fifty thousant Dollars ($250,000.00). Later, John Janney was instrumental in selling additional debentures of the 1929 issue to other parties, some of whom do not reside in Philadelphia and are not associated with the Zimmermann-Clark group. After the fire in the mill in the fall of 1929, John Janney made efforts to sell debentures of the issue of 1930 and succeeded in placing debentures of that issue to a considerable amount with members of the Zimmermann-Clark group, and to others not associated with the group, some of whom did not reside in Philadelphia. All of the Zimmermann-Clark group, as well as some of those originally interested by John Janney, have deposited their debentures with Fidelity. The Debenture Holders Committee now represents all of those who have deposited.

2. The words "closing settlement" contained in paragraph X of plaintiffs' supplemental complaint are intended to designate a meeting at which the several parties in interest will contemporaneously perform the unperformed obligations imposed upon them by the settlement agreement.

3. The words "the defendants and/or the other parties to the Settlement Agreement" contained in lines 3 and 4 on page 11 and the words "they" contained in lines 7, 12, 16 and 19 on page 11 of plaintiffs' supplemental complaint refer to Pioche Consolidated, John Janney, Richard K. Baker and those persons who have by powers of attorney authorized Richard K. Baker and John Janney or either of them

to represent such persons in matters connected with the plan of reorganization.

Dated: This 26th day of February, 1947.

CLARK, HEBARD & SPAHR,
THATCHER, WOODBURN & FORMAN,
/s/ By WM. FORMAN,
Attorneys for Plaintiffs.

Acknowledgment of Service attached.

[Endorsed]: Filed Feb. 27, 1947.

[Title of District Court and Cause.]

ANSWER TO SUPPLEMENTAL COMPLAINT

Answering Plaintiffs' Supplemental Complaint, defendants admit, deny and allege as follows:

1. Defendants admit that they entered into a Settlement Agreement, but deny that said Agreement was entered into under date of July 8, 1942 except as to the Debenture-holders represented by Debenture-Holders' Committee, Percy H. Clark, Albert P. Gerhardt and Robert F. Holden; and allege that the other parties entered into the Settlement Agreement under dates appearing opposite their signatures as set forth in said Agreement and not before, and defendants allege that Plaintiffs' allegation as to the date of said Agreement is material to the rights of defendants and of such other parties, and allege it was and is a part of the Agreement that the Debenture-holders were definitely obligated while other parties to the Settlement Agreement had the right, privilege and option to

accept or reject said Agreement during periods of time set forth in the Settlement Agreement, and further allege that the Debenture-Holders' Committee were informed, and understood, that the other parties to the settlement had refused to give and would not give consideration to any settlement on any basis other than that the Debenture-holders, represented by Debenture-Holders' Committee, must be definitely bound to the terms of a settlement as proposed, before defendants and especially defendant companies and the other creditors would give consideration thereto. And further answering Paragraph I, Defendants admit that the said Settlement Agreement was for the purpose of reorganization but allege that said Agreement was also for the purpose of avoiding or terminating litigation and arriving at a settlement of the action of Plaintiffs against Defendants, and also a settlement of the counter-action of Defendants against Plaintiffs.

2. Answering Paragraph II of Supplemental Complaint, defendants deny generally the allegation that Settlement Agreement provides in substance as set forth therein, excepting subparagraphs a, b, d, e and k thereof, and in reference to subparagraphs c, f, g, h, i, j and l defendants specifically deny that Settlement Agreement provides substantially as therein set forth and allege that said subparagraphs contain changes and omissions material to a correct and proper interpretation of Settlement Agreement and prejudicial to the interests of defendants in this Action, as appears from an examination of said Settlement Agreement.

(a) Answering subparagraph (a), defendants admit allegation in subparagraph (a) subject to the omission of what the Settlement Agreement provides as to stockholders' consent being required as a condition thereto, and defendants allege that the consent of stockholders was given on condition that old securities would be immediately exchanged for new after voting the merger.

(b) Defendants admit allegation in subparagraph (b) subject to provisions in Settlement Agreement which are omitted if same are material.

(c) Answering subparagraph (c), defendants deny that Settlement Agreement in substance provides as alleged therein and defendants allege that said subparagraph (c) omits the reference contained in Settlement Agreement to Paragraphs B and C of said Settlement Agreement, which said Paragraphs B and C deal with Reorganization expenses which are to be paid in cash, and Reorganization expenses which are to be paid in 30-year Notes; and defendants allege that such distinction is a necessary part of what the Settlement Agreement provides in reference to the payment of such Expenses.

(d) Defendants admit matters contained in subparagraph (d).

(e) Defendants admit matters contained in subparagraph (e).

(f) Answering subparagraph (f), defendants deny the allegation and allege that a condition, which is set forth in said Settlement Agreement to wit, that the consent of the Pioche Mines Company stockholders must be secured, is omitted, Defend-

ants allege that the words omitted are material and a necessary part of the Agreement.

(g) Answering subparagraph (g), defendants deny that Settlement Agreement substantially provides as set forth in subparagraph (g) and allege that Settlement Agreement provides that All of the parties to said Settlement Agreement have agreed to use their best efforts to obtain cash for Preference Notes, and allege that the word All is omitted and that said word All is material and a necessary part of said Agreement.

(h) Answering subparagraph (h), Defendants deny that the Settlement Agreement substantially provides as set forth in (h) and allege that matters contained therein are correctly set forth in Clause VII of Settlement Agreement, copy of which is filed as Exhibit A with Plaintiffs' Supplemental Complaint, and defendants specifically allege that essential parts of the Agreement are omitted, which are material and necessary and that such omissions change the intent and meaning of the Agreement, to wit, the provision that such arrangement or settlement so negotiated shall be binding upon the Debenture-holders who have signed the Agreement, or deposited their debentures thereunder, when approved by the holders of a majority of the outstanding Debentures, and also is omitted the provision that Debenture-Holders' Committee warrants, by its signature thereto, that it has obtained the authority to bind a majority of the deposited Debentures.

(i) Answering subparagraph (i), defendants

deny that Settlement Agreement provides substantially as set forth in (i) and allege that said Settlement Agreement provides as set forth in said Settlement Agreement, in Paragraph VIII thereof, copy of which is filed as "Exhibit A" with Plaintiffs' Supplemental Complaint.

And Defendants specifically deny allegation set forth in subparagraph (i) that Settlement Agreement provides that Janney and Baker agreed to sign endorsements to the Settlement Agreement, and allege that obtaining the consent of a majority of the Boston Creditors is a necessary condition to the signing of said endorsement by Baker, and obtaining the consent of a majority of the stockholders is a necessary condition to such signing by Janney; and further deny the allegation that these two gentlemen, Janney and Baker, agree to obtain the consent of a majority of the Boston Creditors and of the stockholders, but on the contrary agreed only to use their best efforts and then only after the Debenture-holders, as represented by Debenture-Holders' Committee, had become committed to the Settlement. Defendants further allege that the foregoing changes are material and alter the meaning of Settlement Agreement.

Answering subparagraph (j), defendants deny that the Settlement Agreement provides as alleged and allege that Settlement Agreement, copy of which is filed as Plaintiffs' "Exhibit A", sets forth in Clause IX thereof what the Agreement provides.

Answering subparagraph (k), defendants admit allegation therein but allege that the Plaintiffs have

omitted a material portion of Paragraph X in that such representative is to be selected by a method of selection hereafter to be agreed upon.

Answering subparagraph (l), defendants admit that provision is made in Settlement Agreement for a reorganization, but allege that Clause V of said Agreement provides that it is immaterial whether this is accomplished through reorganization, or a statutory merger, and allege that the method of statutory merger was selected by the parties as set forth in the Merger Agreement, form of which was approved by Debenture-Holders' Committee on or about December 29, 1942, and was approved by Stockholders' Meetings in December, 1943; and allege that said selection of plan for statutory merger, in preference to plan for reorganization, substantially modifies the procedure in carrying out the terms of Settlement Agreement, which procedure must conform to the Nevada statute, which provides that the titles to the properties of the Merged Companies pass automatically as soon as the Stockholders' Meetings of the merging companies vote approval to the Merger Agreement and the necessary papers are filed with the Secretary of State of Nevada, and Defendants allege that after such vote and filing, all the obligations of all parties to such Settlement Agreement become definite and binding legal obligations.

3. Answering Paragraph III, defendants admit there has been deposited with plaintiff, Fidelity-Philadelphia Trust Company, Five Hundred Ninety-seven Thousand Six Hundred ($597,600.00)

Dollars of Debentures (together with scrip and coupons appertaining thereto) comprising all of the debentures on the list of the Debenture-Holders' Committee, referred to in Supplemental Complaint.

Defendants deny that Debenture-Holders' Committee, in accordance with the said agreement, has used its best efforts to obtain the consent to the plan of reorganization of all of the Debenture-holders who had not deposited their Debentures with Fidelity prior to the execution of the Settlement Agreement, and allege that Debenture-Holders' Committee, contrary to said Agreement, failed to use their best efforts to obtain the consent of said Debenture-Holders but on the contrary made use of such non-deposited Debenture-Holders who conspired with them to defeat, deter and delay the Settlement and Merger, and said Debenture-Holders' Committee and Fidelity repeatedly refused, failed and neglected to give necessary information required by Stockholders' Meeting in reference to said non-deposited debentures and withheld such information contrary to their obligations in reference thereto.

Further answering Paragraph III, defendants admit that there remain debentures in the amount of Eighty-nine Thousand Seven Hundred ($89,700.00) Dollars not represented by, or associated with, Debenture-Holders' Committee, in addition to Debentures deposited with Fidelity, but deny that such $89,700.00 of Debentures have not been deposited under the Agreement or are still outstanding, and allege that Seventy Thousand ($70,000.00)

Dollars thereof which were subject to cancellation upon payment by defendant Consolidated Company are now cancelled by due resolution of the Board of Directors of the Consolidated Company, and such cancellation noted on the books of said Company, and debentures are now in the possession of Consolidated Company, and that the balance, Nineteen Thousand Seven Hundred ($19,700.00) Dollars—excepting Twelve Hundred Fifty ($1,250.00) Dollars thereof, the holders of which cannot be located—were represented at the Stockholders' Meeting, with authority duly given to exchange old debentures for new bonds upon consummation of Merger, and allege that such exchange was effected at Directors' Meetings held to consummate the Settlement, and that the old debentures were duly cancelled upon the books of Defendant Company, and are now in the possession of the Consolidated Company, leaving said Twelve Hundred Fifty ($1,250.00) Dollars of old Debentures remaining outstanding or to be paid in cash; and allege that defendants were not obligated under Settlement Agreement or otherwise to obtain consent of said Debenture-Holders or any of them, and that the surrender of such debentures was not necessary under the Settlement Agreement as a condition to completing Settlement and Merger.

Defendants admit that proxies were obtained by Debenture-Holders' Committee from the stockholders who were the owners of about 190,000 shares of stock, but allege that such proxies were not general proxies as is customary but said proxies were limited to the sole power of voting approval of

Merger and Settlement Agreements and did not permit representatives of said stockholders to vote on any measure, method or procedure which became necessary or advisable to facilitate or make effective said plan of Merger; and defendants allege that Fidelity and Debenture-Holders created obstacles to such plan of Merger.

Defendants further specifically deny that the Debenture-Holders' Committee has performed each and all of the obligations undertaken by it under the Settlement Agreement.

4. Answering Paragraph IV, defendants admit that Six Hundred Eighty-seven Thousand Three Hundred Dollars ($687,300.00) of Debentures were certified by Fidelity as alleged, but deny that said amount of Debentures remain outstanding; and defendants allege that Five Hundred Ninety Thousand Eight Hundred Dollars ($590,800.00) thereof have been paid, and that Seventy Thousand ($70,000.00) Dollars thereof pledged as collateral security for notes have been cancelled and which debentures also have now been cancelled as hereinbefore set forth, and that Twenty-five Thousand Two Hundred Fifty ($25,250.00) Dollars thereof, authorized to be pledged as collateral security remain to be cancalled on payment of Two Thousand Dollars ($2,000.00) Note, held by E. W. Clark & Company, to be paid from the sale of Preference Notes and not otherwise, leaving One Thousand Two Hundred Fifty ($1,250.00) Dollars Debentures which remain to be paid.

Defendants admit that Five Hundred Ninety Seven Thousand Six Hundred ($597,600.00) Dollars

Debentures have been deposited with Fidelity but have not sufficient knowledge or information upon which to base a belief as to whether all, or how many, of these Debentures were deposited under the Debenture-Holders' Agreement, but allege that after Settlement Agreement was signed by the Debenture-Holders' Committee all debentures whose representatives have signed the Settlement Agreement were held subject to its provisions.

5. Answering Paragraph V of said Supplemental Complaint, defendants admit that on or about November 22, 1943, Fidelity requisitioned Pioche Mines Consolidated, Inc., the surviving company, for Five Hundred Eighty-two Thousand Three Hundred Fifty ($582,350.00) Dollars of Income Bonds and One Million Seventy-five Thousand Eight Hundred Ninety-one (1,075,891) shares of Common Stock for delivery to holders of its non-negotiable receipts, giving the names and addresses in which such bonds and shares should be issued. And Defendants allege that there was no obligation at any time to deliver said Income Bonds to Fidelity by Pioche Mines Consolidated, Inc., the surviving company, under said Settlement Agreement, said Merger Agreement or otherwise.

Defendants deny that defendant Consolidated requested from Fidelity a requisition as alleged; and allege that Defendants sent a request to Fidelity for a list setting forth names, and addresses, of the Debenture-holders who were committed to terms of Settlement Agreement and obligated to exchange old securities for new upon consummation of Mer-

ger, and allege such a list of names, and addresses, was necessary in order to register the Income Bonds, which under terms of Merger Agreement were required to be registered, and that such new bonds could not be issued and registered without such names, and addresses.

Defendants admit that on or about the 27th day of December, 1943, Pioche Mines Company and Nevada Volcano Mines Company duly were merged into Pioche Mines Consolidated, Inc., now the surviving company, by a Merger Agreement duly authorized, certified and filed in the office of the Secretary of State, of the State of Nevada, as shown by Certificate thereof attached to said Supplemental Complaint, but defendants allege that said Merger Agreement was so ratified by Stockholders' Meetings of the merged Companies only after assurances by Debenture-Holders' Committee, and Fidelity, were given to the said Meetings, representing that all of the Debenture-holders on the list furnished by Fidelity had given their assent to the terms of Settlement Agreement.

Defendants admit that on or about the 24th day of April, 1944, Pioche Mines Consolidated, Inc., the surviving company, transmitted to Fidelity Five Hundred Thirty-nine Thousand Eight Hundred ($539,800.00) Dollars of Income Bonds and One Million Five Thousand Seven Hundred Thirty-six (1,005,766) shares of Capital Stock of Pioche Mines Consolidated, Inc., the surviving company, which Income Bonds were registered in the respective names of the parties on Fidelity's list.

Defendants admit that Fidelity has not received from Pioche Mines Consolidated, Inc., the surviving company, certain Income Bonds and Common Stock listed in its request to be issued in the following names and amounts:

> Henry G. Brooks—Two Thousand Five Hundred ($2,500.00) Dollars of Income Bonds; Four Thousand One Hundred Twenty-five (4,125) shares of Common Stock;
>
> Fidelity - Philadelphia Trust Co. — Fifty ($50.00) Dollars of Income Bonds, no shares of Common Stock.
>
> E. W. Clark & Co.—Forty Thousand ($40,000.00) Dollars of Income Bonds, Sixty-six Thousand (66,000) shares of Common Stock.

but defendants deny that at any time there was, or now is, any obligation upon Pioche Mines Consolidated, Inc., the surviving company, either under said Settlement Agreement, said Merger Agreement or otherwise to deliver said Income Bonds, or any of them, to Fidelity.

And further answering Paragraph V, Defendants have not sufficient knowledge, or information, upon which to base a belief as to the allegation that Forty Thousand ($40,000.00) Dollars of Debentures, listed on Fidelity's request in the name of E. W. Clark & Company, are represented by corresponding face-value of Fidelity's non-negotiable receipts outstanding in the name of Drexel & Company, or that Fidelity has been requested by Drexel & Company to cause said new securities to be listed in the

name of E. W. Clark & Company; but defendants allege that an issue of $40,000 of Income Bonds proposed to be issued to E. W. Clark & Co. had been the subject of much correspondence between Defendant company and Fidelity, and that replies from Fidelity to such correspondence with reference to said $40,000.00 Debentures were ambiguous, evasive and indefinite, and Defendants further allege that had said $40,000.00 of Income Bonds been issued to E. W. Clark & Company as requested by Fidelity an over-issue of Income Bonds would have resulted, and allege that requisition of Fidelity was lacking in necessary details and particulars to enable Defendant company's Directors to determine where to locate the error in Fidelity's figures that would have resulted in such an over-issue.

And defendants allege that Fidelity failed to facilitate consummation of the Merger and Settlement by requiring that the figures in their requisition to Defendant Company be based on an audit of Debenture Account as is customary in such transactions; and defendants allege that the Debenture Account was kept in Philadelphia by Percy H. Clark, party to Settlement Agreement and formerly attorney for Defendant Company, and that said Clark has never furnished an audit of said Debenture Account, and allege that defendant Company made a request for such an audit of Debenture Account to Barrow Wade & Guthrie, Certified Public Accountants, while they were auditing defendant Company's books for the Debenture Holders' Committee and such request was ignored.

And further answering Paragraph V, defendants admit that on or about April 24, 1944, Fidelity received from Pioche Mines Consolidated, Inc., Thirty-five Thousand ($35,000.00) Dollars of Income Notes, registered in its name, for the account of the attorneys for Fidelity-Philadelphia Trust Company and the Debenture Holders' Committee.

Further answering allegation as to $2,500.00 of Income Bonds of Henry G. Brooks, defendants admit that said Income Bonds, and also Forty-one Hundred Twenty-five (4,125) shares of Common Stock, in the name of Henry G. Brooks, have not been sent to Fidelity, and allege that said Henry G. Brooks, together with Lawrence R. Lee and Theodore E. Brown, are Intervenors in a certain Complaint in Intervention filed in this action, in which Complaint they seek to have Debenture-Holders' Agreement of February 1, 1939, found and decreed to be void and of no force and effect and that as a consequence of and in conformity with said Complaint in Intervention and the jurisdiction of this Court thereof, defendants tender herewith said Twenty-five Hundred ($2,500.00) Dollars of Income Bonds and Forty-one Hundred and Twenty-five (4,125) shares of Common Stock registered in the name of Henry G. Brooks to be disposed of in accordance with the decree and judgment of this Court.

Defendants admit that Fifty ($50.00) Dollars of Income Bonds are due to Fidelity, but allege that no bond denomination of Fifty ($50.00) Dollars is provided for in the Merger Agreement, and as a

consequence thereof herewith offer to pay Fidelity Fifty ($50.00) Dollars in cash or a bond specially denominated in the sum of Fifty ($50.00) Dollars, whichever may be decreed by the Court herein.

6. Answering Paragraph VI of Supplemental Complaint:

Defendants deny that Fidelity holds Debentures, scrip and coupons as Depositary under Debenture-Holders' Agreement in any respect in which said Debenture-Holders' Agreement conflicts with the Settlement Agreement, and Defendants allege that Settlement Agreement in Paragraph I-D-2 thereof provides in substance that the certificate of stock, sent to Fidelity, together with the issue of Income Bonds provided in 1-A, shall discharge all claims of the Debenture-Holders for both principal and interest, and defendants allege that the Settlement Agreement provides in substance in Clause VII, that said Settlement Agreement, when approved by holders of a majority of outstanding Debentures, shall be binding upon the holders of Debentures and scrip who have signed the Debenture-Holders' Agreement and deposited Debentures thereunder, and that said Debenture-Holders' Agreement empowers the Debenture-Holders' Committee to negotiate with defendants an arrangement in the nature of a reorganization or settlement for the purpose of avoiding or terminating litigation, and that such arrangement, or settlement, so negotiated shall be binding upon the holders of Debentures and Scrip who shall have signed the Agreement or deposited their Debentures thereunder when approved by a

majority of the outstanding Debentures, and that the Debenture-Holders' Committee warrants, by its signature thereto, that it has obtained the authority to bind the deposited Debentures by the authority of a majority thereof. And defendants allege that upon the signature of Debenture-Holders' Committee to Settlement Agreement containing the foregoing provision, Debenture-Holders became obligated to the terms of Settlement Agreement after which their Debentures were held subject to the terms of said Settlement Agreement.

Defendants allege that as relates to Income Bonds and Income Notes and shares of Stock delivered to Fidelity by defendant Consolidated, the delivery of same to Fidelity was with the intent and purpose of carrying into effect the provisions of the Settlement Agreement and not otherwise. Defendants allege that such delivery was requisitioned or requested by Fidelity and by Debenture-Holders' Committee, and allege there was no provision in the Settlement Agreement or any other Agreement which calls for the delivery to Fidelity of the Income Bonds, but only to deliver to them the shares of Stock and $35,000 of Income Notes to be paid to attorneys for their services.

Defendants allege that Fidelity was without lawful right or authority to hold said Income Bonds except for prompt delivery thereof to Debenture-Holders' and had no authority to hold possession thereof, and allege that Fidelity, failing to deliver said Income Bonds, was obligated to return same

to defendant Consolidated Company for such action in the premises as they might be advised.

Defendants deny that Debenture-Holders' Agreement is a part of Settlement Agreement, except for the purpose of establishing the authority of Debenture-Holders' Committee in the execution of said Settlement Agreement and by the terms of Settlement Agreement is only made a part of said agreement by reference.

And defendants deny the allegation that because of a provision in Debenture-Holders' Agreement Fidelity is unable to surrender the deposited Debentures for cancellation, and to distribute the Income Bonds and Stock until Defendants perform remaining obligations, if any, imposed upon them by the terms of Settlement Agreement; and deny that they have called upon Fidelity to surrender said deposited Debentures for cancellation; and allege that said debentures are not and never have been secured by lien or mortgage and that they are merely Debenture Notes and that they became null and void and of no effect immediately upon delivery to Fidelity for account of holders of the non-negotiable receipts of the new Income Bonds and Income Notes as provided for in Settlement Agreement and said Debentures were thereby paid and discharged and should be cancelled.

7. Defendants deny all matters as alleged in Paragraph VII excepting defendants admit that at one time Fidelity offered to discontinue the above-entitled suit, and allege that the discontinuance of said suit required the performance of other acts

provided for in the Settlement Agreement on the part of Fidelity and Debenture-Holders' Committee which they had failed and refused, and still fail and refuse to perform. Defendants specifically deny that the order of carrying out the provisions of settlement is as alleged in Paragraph VII.

8. Defendants deny allegation in Paragraph VIII and defendants further specifically deny that the defendants, or any of them, or Pioche Mines Consolidated, Inc., the surviving company, are obligated under said Settlement Agreement to deliver said debentures in the amount of Eighty-nine Thousand Seven Hundred ($89,700.00) Dollars (which as already set forth in Paragraph 3 have been fully discharged, excepting $1,250.00 thereof), to Fidelity for cancellation; and defendants further deny that performance by the parties of all of the several provisions of the Settlement Agreement is a condition-precedent to discontinuance of said suit.

9. Answering Paragraph IX, Defendants deny that Clarence E. Miller and Edward C. Dale, Plaintiffs, signed proxies to be voted at Stockholders' Meeting of Pioche Mines Consolidated, called for July 15, 1943, except limited proxies which did not empower proxy-holders to take part in the vote of Stockholders' Meetings held from July 15th down to December 1943, wherein said Meetings attempted to carry out Settlement Agreement and remove the obstructions placed in the way of Stockholders voting their approval of Settlement and Merger Agreements, as elsewhere set forth in this Answer, said

proxies being limited solely to voting on approval of said Agreements.

And defendants deny any knowledge or information thereof sufficient to form a belief that Clarence E. Miller and Edward C. Dale co-plaintiffs will join in discontinuance of said suit and therefore deny the same.

And defendants deny that the plan finally selected under Settlement was for a reorganization as alleged, and allege such plan was for a Statutory Merger in accordance with the detailed provisions of Nevada law.

10. Answering Paragraph X, defendants deny generally and specifically that they refused to arrange for Closing Settlement or to take part in such settlement, and allege that the Stockholders' Meeting which was required to be held under Nevada law for the ratification of said Merger and Settlement Agreements was called for that purpose for July 15, 1943, and allege that said Meeting was extended with frequent adjournments through December, 1943, and repeatedly attempted to complete the arrangements of settlement necessary for voting the approval of Settlement and Merger Agreements, and that Directors' Meetings from February to May, 1944, were held in continuous session for the purpose of consummating the Settlement and Merger Agreements; and defendants allege that Fidelity and Debenture-Holders, represented by Debenture-Holders' Committee in disregard of the intent of Paragraph X of Settlement Agreement, failed to be represented at Meetings of said Board

of Directors though they were repeatedly requested and urged to have their elected representative, or some other representative, present at said meetings and allege that they neglected and refused so to do, and their representatives at Stockholders' Meeting attended with limited proxies and refused to take part in the efforts for closing, and that otherwise Fidelity and Debenture-Holders' Committee obstructed the proceedings lawfully held by Stockholders and Directors for the purpose of consummating the Settlement and Merger Agreements, and delayed the consummation of said Settlement and Merger by evasive, inaccurate and confusing answers to questions asked by Stockholders' Meetings and Directors' Meetings and otherwise deliberately and intentionally delayed, obstructed and confused the necessary steps to the consummation of said Agreements.

And defendants specifically allege that Settlement Agreement calls for no other arrangement for a Closing Settlement than the authority conferred by the laws of Nevada for corporate action, to wit, Stockholders' and Directors' Meetings as aforesaid, and allege that no other meetings were necessary for carrying into effect the provisions of Settlement Agreement, and allege that Settlement Agreement was signed by the Defendants and other creditors on the condition and with the understanding that no further negotiations were required.

11. Answering Paragraph XI, subparagraph (a), defendants deny the allegation that Janney and Baker secured consents of Directors as alleged, and

allege that Janney and Baker arranged for a meeting to be called of the Directors of Pioche Mines Consolidated and Pioche Mines Company and Nevada Volcano Mine Co. and submitted the plan of Settlement and Merger to such Meetings for their consideration. Defendants admit that said companies have duly executed the Settlement Agreement, and admit that Janney and Baker secured powers of attorney from the holders of all Debentures outstanding and not deposited with Fidelity, excepting $1,250.00 elsewhere mentioned, authorizing Baker to accept the new Income Bonds in exchange for their old Debentures and to represent them at Stockholders' Meetings held for the purpose of consummation of Settlement and Merger, and have secured powers of attorney from other creditors and others.

(b) Answering subparagraph (b), defendants deny the allegation that they caused Pioche Mines Company and Nevada Volcano Mines Company to be merged into Pioche Mines Consolidated, Inc., but admit that stockholders' Meetings of said companies did vote to merge in accordance with terms of Settlement and Merger Agreements and allege that said vote, approving said Merger was secured by representations of the Debenture-Holders' Committee and Fidelity, that all of the Debentures on Fidelity's list were committed to the Settlement Agreement, and that the old Debentures would be exchanged for new Income Bonds immediately upon voting merger and filing required papers with Secretary of State of Nevada.

(c) Answering subparagraph (c), defendants admit the delivery to Fidelity by defendant Pioche Mines Consolidated of Five Hundred Thirty-nine Thousand Eight Hundred ($539,800.00) Dollars of its Income Bonds, and One Million Five Thousand Seven Hundred Sixty-six (1,005,766) shares of its Common Stock.

(d) Answering subparagraph (d) thereof, defendants admit the delivery to Fidelity of Thirty-five Thousand ($35,000.00) Dollars of Income Notes to cover attorneys' fees of Fidelity and Debenture-Holders' Committee.

12. Answering Paragraph XII, of Supplemental Complaint, Defendants deny, generally and specifically, that the Defendants or any of them, and/or John Janney or Richard K. Baker in any or all capacities in which they, or either of them, are parties to said Settlement Agreement, have failed or neglected, or continue to fail or neglect, to perform said Settlement Agreement in the particulars, or any of them, specified in said Paragraph XII, or in any other particular, except insofar as Fidelity and the Debenture-Holders represented by Debenture-Holders' Committee have prevented the consummation of said Settlement Agreement, as herein elsewhere set forth.

(a) Answering Paragraph XII, subparagraph (a), defendants specifically deny that they have failed and neglected to perform any agreement to deliver to Fidelity Eighty-nine Thousand Seven Hundred ($89,700.00) Dollars of Debentures as set forth in Paragraph 8 of this Answer, and deny that

there is any obligation to make such delivery, and further deny that they have failed or neglected to perform said agreement in not delivering to Fidelity all or any part of the shares of Stock being held for any Debentures which remain outstanding. Defendants allege that upon an audit of Debenture Account, or upon a proper accounting with Fidelity, and on proper demand, Defendant Consolidated Company is ready and willing to make delivery of Income Bonds together with the accompanying shares of stock in exchange for any Debentures that Fidelity is authorized to represent. Defendants allege that there is a balance of Seventy Thousand One Hundred Twenty-five (70,125) reclassified shares of Stock being held, which balance would accompany Forty-two Thousand Five Hundred Fifty ($42,550.00) Dollars of Income Bonds, and that said bonds have been withheld for reasons set forth under Paragraph V of this Answer.

(b) Answering Paragraph XII, subparagraph (b), defendants admit that they have not issued and delivered Forty-two Thousand Five Hundred Fifty ($42,550.00) Dollars of new Income Bonds and Stock to be distributed to the holders of Forty-two Thousand Five Hundred Fifty ($42,550.00) Dollars of Fidelity's non-negotiable receipts, but deny there is any failure or neglect to perform Settlement Agreement by reason thereof, and defendants herein reallege Paragraph V of this Answer with the same force and effect as if again fully set forth herein, together with their admissions, denials, allegations and tenders relative to said Forty-two Thousand

Five Hundred Fifty ($42,550.00) Dollars of Debentures and contained in said Paragraph V hereof.

(c) Answering subparagraph (c), defendants deny that there is any failure on their part, or any neglect, to perform Settlement Agreement in that they have not paid cash to Fidelity for account of parties entitled thereto in amount sufficient to cover reasonable reorganization expenses, and defendants allege that the cash for the payment of Reorganization expenses to be paid in cash, is specifically provided for in Settlement Agreement, Clause VI, to be obtained from the sale of Preference Notes, under which all parties have agreed to use their best efforts to obtain such cash; and defendants allege that Fidelity and Debenture-Holders have failed, refused and neglected to comply with such provision of said Contract, and they have obstructed and prevented defendant Consolidated Company from providing such cash from the sale of Preference Notes by refusing to distribute the new securities to Debenture-Holders, and in other ways have created a cloud upon the Preference feature provided in Settlement Agreement for the Preference Notes; and defendants further allege that but for such delays and obstructions on the part of Fidelity and Debenture-Holders, defendant Pioche Mines Consolidated could have sold said Preference Notes provided for in Settlement Agreement.

(d) Answering Paragraph XII, subparagraph (d), defendants deny they have failed to perform the Settlement Agreement as therein alleged, and allege that defendant Consolidated Company is

ready, and willing, to deliver upon proper demand, any Income Bonds, Income Notes and/or Stock, to any parties entitled to receive same, and defendants further allege that upon the sale of Preference Notes they are ready and willing to pay any obligations, required to be paid in cash, under Settlement Agreement, and further allege that such sale of Preference Notes and all other matters that remain to be performed under said Settlement have been prevented by the misconduct of Fidelity and Debenture-Holders represented by Debenture-Holders' Committee as elsewhere alleged in this Answer.

(e) Answering Paragraph XII, subparagraph (e), defendants admit said note of Two Thousand ($2,000.00) Dollars to E. W. Clark & Company has not been paid by Pioche Mines Consolidated, but allege they are not under any obligation so to do under Settlement Agreement until after sale of Preference Notes, provided for in Clause VI of said Agreement, which sale the misconduct of Fidelity and Debenture-Holders' Committee, as elsewhere set forth in this Answer, has prevented.

And defendants deny that Forty Thousand ($40,000.00) Dollars of non-negotiable receipts for Debentures is lawfully held by E. W. Clark & Co. as collateral to said Two Thousand ($2,000.00) Dollar note, and allege that said $40,000.00 of Debenture was deposited against said loan, (in original amount of $4,000.00), with E. W. Clark & Co. as collateral without authority except to the extent of $25,250.00 of said debentures, by Percy H. Clark who was attorney for E. W. Clark & Co. and also attorney for

defendant Consolidated Company and allege that the authority of said Percy H. Clark to use debentures as collateral was limited to debentures not paid for. Defendants allege that $14,750.00 of said $40,000.00 of debentures was not authorized to be so used and that said $14,750.00 of Debentures had been paid for by Lawrence R. Lee and Theo E. Brown who are intervenors, along with Henry G. Brooks, in this action.

And Defendants deny the allegation that no Income Bonds are provided to be issued to the holder of said $40,000.00 of said non-negotiable receipt and allege that $14,750.00 of new Income Bonds and accompanying Stock are required to be issued to Messrs. Lee and Brown under Settlement Agreement, and have been issued, and hereby are tendered into this Court for such disposition as the Court may order to be made thereof.

And defendants allege that said Lee-Brown $14,-750.00 of Income Bonds were intermingled with other bonds in Fidelity's request for One Hundred Sixteen Thousand ($116,000.00) Dollars of Income Bonds to be issued in the name of Fidelity; and defendants allege that the turning over by Percy H. Clark of said $14,750.00 of Lee-Brown Debentures to E. W. Clark & Company as collateral, and the subsequent intermingling by Fidelity of $14,750.00 Income Bonds with bonds requisitioned to be issued to them was intended to create, and did create, confusion in the debenture accounting which has added to the delay in consummation of Settlement Agreement.

And defendants further specifically deny that said $40,000.00 of Bonds, or any part thereof, are to be retired before, or contemporaneously with, the performance of other obligations as alleged; and further deny that there is anything in the Settlement Agreement which requires any bonds to be retired contemporaneously with the performance of any other obligation as alleged.

Answering allegation as to contemporaneous performance, defendants further allege that titles to properties of the several companies passed to the Merged Company, under Nevada law, immediately upon voting approval by the Stockholders of the Merged Company, and filing with Secretary of State the papers as required by said law, and that thereafter it became obligatory upon all other parties to perform their several obligations in the manner and in ways as provided in Settlement Agreement, and further allege that after said titles passed it immediately became necessary for the status of old Debentures to be made definite and clear so as to make practicable the sale of Preference Notes, as provided in Clause VI of Settlement Agreement.

(f) Answering Paragraph XII, subparagraph (f), defendants deny that they have not paid, or provided for, the expenses and reasonable fees for services of Fidelity as Trustee as alleged; and allege that sufficient Income Bonds and/or Income Notes have been provided to make payment of all such obligations as are payable in Bonds or Notes, and allege that cash obligations are provided for in Preference Notes later to be sold, and allege that

defendant Consolidated will pay any and all such claims that can be shown to be justly due as provided in said Settlement Agreement upon sale of said Preference Notes, and allege that in respect to fees to Trustee as Depositary, defendants allege that nothing is now due them thereon and that when said payments become due defendants are willing to pay such amounts as may be just and reasonable and as provided for in Settlement Agreement.

(g) Answering Paragraph XII, subparagraph (g), defendants deny any failure to issue Income Bonds, Income Notes and Preference Notes immediately after consummation of Merger as alleged, except insofar as Fidelity and their attorneys made it impossible to immediately issue said securities, but admit that there was a delay from December, 1943 to August, 1944 in issuance of said securities, and allege that such delay was due entirely to the actions of Fidelity and Debenture-Holders' Committee, and Percy H. Clark, attorney for Fidelity, and other attorneys for Fidelity, in that they sought by unilateral action, without consent or approval of Defendant Company, to have the Securities Exchange Commission make a ruling as to the legality of the issuance of said securities, on the ground that the Form of said bond and note was defective in omitting to state on the face of said Bond that the Trust Indenture Act had been complied with, and also on the ground that the issuance of said securities would be in violation of Trust Indenture Act and Securities Act; and defendants allege that Fidelity and Clark failed and refused, to furnish

Defendants with a copy of their statement of facts which they had submitted to the Securities Commission, and allege that after the aforesaid acts of Fidelity and Debenture-Holders, the President of defendant Company held conferences during June and July and part of August with their attorney in New York, and representatives of the Securities Exchange Commission, and allege that after such conferences, and at the suggestion of representatives of said Commission, defendant company prepared a statement of facts relating to said issue in a letter dated July 7, 1944, addressed to defendant company's attorney and that defendant company handed said letter to representatives of the Securities and Exchange Commission, along with an Opinion letter of defendant Company's attorney, dated July 11, 1944, which letters are hereto attached, and made a part hereof and marked Defendants' "Exhibits One" and "Two", respectively, with a request for a decision from the Securities and Exchange Commission on the application to such issue of the Securities Act and the Trust Indenture Act, which Fidelity and the Debenture-Holders' Committee claimed were violated, and defendants allege that defendant Pioche Mines Consolidated secured from the Securities Exchange Commission the Opinion Letter of their Legal Department, as set forth in their letter dated July 31, 1944, a copy of which is hereto attached and made a part hereof and marked "Defendants' Exhibit Three", to the effect that the Securities Act and Trust Indenture Act

were not involved as has been claimed by Fidelity and Debenture-Holders' Committee.

And defendants allege that they, and especially Pioche Mines Consolidated, used due diligence and made every effort to prevent such delay in the issuance of such securities, and allege that Stockholders' meeting of Consolidated Company then in session at Pioche, Nevada, for the purpose of voting the Merger, sent to Percy H. Clark and other attorneys for Fidelity a Form of proposed income note and income bond for criticism or approval, and that although repeated requests were made for a reply thereto no reply was received by the Stockholders' Meeting from Fidelity, or Clark, or their other attorneys with any criticism upon the Form of bond, or any suggestion relating to the need, on the face of the bond, of a statement that the Trust Indenture Act had been complied with, and allege that after a reasonable lapse of time the said income bonds and notes were printed in accordance with said Forms, as proposed, and were registered in the names on the list furnished defendant Company by Fidelity, and that said Income Bonds and accompanying Stock, as elsewhere set forth in this Answer, were sent to Fidelity on or about April 27, 1944.

And defendants further allege that after the Opinion of the Legal Department of said Securities and Exchange Commission was obtained, Fidelity in collusion and conspiracy with said Percy H. Clark and Debenture-Holders' Committee wrongfully continued to withhold the distribution of the new securities and still continue so to do, and allege that

Fidelity stated in a letter to defendant Company that upon the lapse of ten days they would make such distribution, and that Fidelity continued to fail to distribute said new Bonds after the lapse of said ten days, and defendants further allege that the actions of Fidelity and Percy H. Clark, their attorney, and the Debenture-Holders' Committee, as above alleged were deliberate, and intentional, and well calculated to hold up the distribution of said new securities and delay the consummation of Settlement Agreement.

And defendants further allege that in various and sundry other ways Fidelity, and Debenture-Holders' Committee, and Percy H. Clark have delayed the issuance of said Income Bonds, and Income Notes and Preference Notes, and that Fidelity and Debenture-Holders' Committee and Percy H. Clark completely failed, and refused, to cooperate with defendant Company in all matters relating thereto.

13. (a) Answering Paragraph XIII, subparagraph (a), defendants deny all matters in said paragraph contained, and in this respect allege that respective conveyances of all the said properties, including the mill site, were, at the time of the filing of plaintiffs' Supplemental Complaint, and now are, matters of record which should and could have been known to Fidelity and Debenture-Holders' Committee if they had attended Stockholders' and Directors' Meetings where said conveyances were offered or had they otherwise exercised reasonable diligence and good faith.

(b) Answering Paragraph XIII, subparagraph

(b), defendants deny, generally and specifically, all matters in said paragraph contained, and in this respect allege that the delivery of the Nevada Volcano Mines Company Stock was duly made by John Janney to Pioche Mines Consolidated, Inc., and that such delivery is a matter of the corporation's records, which should and could have been known to plaintiffs if they had exercised reasonable diligence and good faith. Defendants further allege that under Nevada law when the merger was consummated the assets of Volcano Mines Company became the property of Pioche Mines Consolidated, Inc., the surviving company, and the stock of Volcano Mines Company thereby became null and void and of no effect.

(c) Answering Paragraph XIII, subparagraph (c), defendants admit that they have not issued and delivered Thirty-five Thousand ($35,000.00) Dollars of Income Notes to the attorneys for defendants, Pioche Mines Consolidated, Inc., Pioche Mines Company and John Janney, including Clarence M. Hawkins. Delivery of said notes to defendants' attorneys is not a condition-precedent to consummation of the Settlement Agreement and defendants deny that defendant, Pioche Mines Consolidated, Inc., is obligated to Clarence M. Hawkins for any attorney's fees or at all, and allege that said Clarence M. Hawkins is not entitled to any part or portion of said Thirty-five Thousand ($35,000.00) Dollars of Income Notes.

(d) Answering Paragraph XIII, subparagraph (d), defendants deny all matters alleged, and allege

that by the terms of the Settlement Agreement said stock was to be exchanged at the office of defendant company and that the defendant Company has prepared said stock certificates for delivery in the names of persons entitled to same, and has delivered such of said stock as has been demanded, and is ready to deliver certificates for all remaining shares upon the demand of parties entitled thereto and surrender of the Certificate for their old Stock, or upon the completion of Settlement Agreement without such demand.

(e) Answering Paragraph XIII, subparagraph (e), defendants admit that Pioche Mines Consolidated, Inc., the surviving company has not issued and sold Preference Notes as alleged, but defendants again allege that the issuance and sale of said preference notes has been deterred, obstructed and prevented by the Acts and conduct of Debenture-Holders' Committee, Fidelity, and of Percy H. Clark, all as more fully set forth elsewhere in the Answer.

And answering allegation that Settlement Agreement provides that these Preference notes to the extent necessary will be taken by less than ten of the Company's stockholders, defendants deny that Settlement Agreement contains any such provision and allege that this statement is a part of the statement contained in defendants' "Exhibit 1", other important parts of which are omitted, the omission of which makes the statement inaccurate, and reference is made to Defendants' "Exhibit One" for a correct statement.

(f) Answering Paragraph XIII, subparagraph (f), defendants admit that no long term lease of the said properties has been obtained by the defendants but deny that Settlement Agreement provides that defendants shall obtain such long-term lease. Defendants further deny that they have failed to negotiate for a lease or to use their best efforts to obtain a lease under the terms of which an income would be assured to Merged Company, and allege that they have made such efforts, and allege that the efforts made were rendered impossible of accomplishment by the actions of Fidelity and Debenture-Holders' Committee as elsewhere set forth in this Answer, which delayed the merger and which deterred and obstructed the settlement. Defendants further allege that the acts, demands, threats and assertions of said Fidelity, and Clark, their attorney, and of Debenture-Holders' Committee, were intended to deter and prevent and did deter and prevent prospective lessors from giving serious consideration to a lease of said properties.

14. Answering Paragraph XIV, defendants admit as alleged in Paragraph XIV that the partial performance of Settlement Agreement by the parties has unalterably changed the relation of the parties to each other and to the enterprise, and allege that the said unalterably changed relations was caused by, and has resulted from, the actions of Fidelity and Debenture-Holders' Committee and Percy H. Clark, attorney for Fidelity and Debenture-Holders' Committee, who wilfully and wrongfully induced defendants, and particularly Defend-

ant Companies and Volcano Mines Company, to merge and thus convey the titles of their respective properties to the Merged Company, by giving assurances to said Merging Companies, in Stockholders' Meeting assembled, that all the Debentureholders on Fidelity's list had consented to Settlement Agreement and were obligated thereunder to exchange old securities for new immediately upon consummation of the Merger, thus inducing Stockholders' Meeting to believe, and they did believe, that on voting the Merger all Debentures on Fidelity's requisition list would be exchanged for the new Bonds without delay, and defendants further allege that Fidelity and Debenture-Holders' Committee so represented in bad faith and gave the Stockholders' Meeting to so believe and allege they had no intention, for themselves or on the part of Debentures they represented, of carrying out the contract of Settlement.

And defendants allege that after inducing defendants' Stockholders to vote the merger under the belief and with the representation as aforesaid, their subsequent actions, as herein elsewhere set forth—and especially the actions of Fidelity, Percy H. Clark and Debenture-Holders' Committee in working together to have the Securities Exchange Commission involved in their efforts to delay or defeat the Settlement—disclose that their intent was to make use of the contract of settlement as a means of causing the properties of Pioche Mines Company and of Nevada Volcano Mines Company to pass to defendant Consolidated Company under

Nevada Merger Statute, intending thereby to force upon defendants a position of disadvantage in future negotiations, and intending to force such future negotiations hoping thereby to gain further advantages to themselves from the fact that said Merged Companies had surrendered control of, and title to, the properties which were formerly held by said companies, and also for the purpose, and with the intention, of having Pioche Mines Consolidated, the Merged Company, acquire additional property back of the securities held by Plaintiffs and their associates, and allege that aforesaid parties also intended thereby to deprive the Emergency Creditors who were creditors of Pioche Mines Company of their very favorable credit position which they occupied before said Merger, in that said Creditors had first claim to the assets of said Pioche Mines Company, giving them complete and entire security for the payments of Cash Advances which they had made to said Pioche Mines Company, which advances are referred to in Settlement Agreement as Emergency Creditors.

15. Answering Paragraph XV, defendants admit that Messrs. Hartshorn & Walter were engaged by Pioche Consolidated to audit its books and accounts and that a member of the firm came to Pioche for that purpose, but deny that Plaintiffs and the Debenture-Holders' Committee furnished said auditors with necessary information requested by them, and allege that said auditors were unable to complete their auditors' report, or to make a satisfactory statement to the Stockholders' Meeting without in-

formation as to what the outstanding debts of the surviving company would be after the stockholders completed the Merger by voting approval thereof; and further allege that said auditors did request from Debenture-Holders' Committee definite information setting forth the amount of debentures in their group which were committed to the Settlement Agreement, and the amount of debentures which were not committed and would be outstanding and payable after the Merger was consummated, which information Debenture-Holders' Committee failed and refused to divulge to auditors as requested. Defendants allege that they are willing to furnish Plaintiffs with auditors' report of Hartshorn & Walter when said audit is completed.

16. Further answering, Defendants allege that Fidelity and the Debenture-Holders represented by Debenture-Holders' Committee and Percy H. Clark, attorney for Fidelity, and for Debenture-Holders have breached the Settlement Agreement and have failed, neglected and refused to carry out its provisions, and have failed and refused and neglected to cooperate with defendant Company in its effort to carry out said provisions and have failed to do those things necessary for the consummation of same but on the contrary have intentionally obstructed and delayed said settlement, and have, until now, deliberately and intentionally prevented the final consummation of Settlement Agreement.

17. Further answering, defendants allege that by reason of the delivery to Fidelity of Five Hundred Thirty-nine Thousand Eight Hundred Dollars

($539,800.00) of Debentures, and One Million Five Thousand Seven Hundred Sixty-six (1,005,766) shares of Stock, as set forth in Paragraph V of Supplemental Complaint, that Fidelity cannot maintain any claim or demand upon defendants so long as Fidelity, and the Debenture-Holders who have deposited their Debentures with Fidelity, refuse to have distributed the new securities provided for in Settlement Agreement to those rightfully entitled thereto and so long as they continue their efforts to confuse the status of the settlement, nor so long as they refuse to have cleared the cloud from the title to the Preference-feature of the Preference Notes provided for in Paragraph VI of said Settlement Agreement, to the end that prospective investors may safely invest in said Preference Notes without the threat of litigation to the Company issuing said notes, and plaintiff otherwise must carry out the provisions of Settlement Agreement as far as is necessary or proper to aid and facilitate the consummation of said Settlement.

18. That properties of the merged Company contain vast quantities of lead and zinc ores, which during recent years have commanded a bonus from the United States Government by reason of the strategic value of such materials in times of war. Since July 8, 1942, the date of the said Settlement Agreement, by reason of the failure of the Plaintiffs to carry out the terms of the Settlement Agreement, the merged Company has been unable to finance or lease or otherwise to develop said mines or take advantage of the bonus offered in respect thereto

by the Government, or to avail themselves of the assistance of the Reconstruction Finance Corporation, which was available to all mines having such strategic ores, and by reason thereof, said merged Company has been deprived of the profits which it otherwise would have obtained.

19. Defendants allege that prior to the consummation of the Merger of Pioche Mines Company and Nevada Volcano Mines Company into Pioche Mines Consolidated, on December 27, 1943, the two said companies were both Nevada corporations, managed by their respective Boards of Directors, they were each of them separate, integral organizations with no relation to Pioche Mines Consolidated, Inc. excepting that said Pioche Mines Consolidated, Inc. was the owner of stock in Pioche Mines Company and owned an equitable or beneficial interest in the Stock of Nevada Volcano Mines Company, held under a Trust for the benefit of certain Pioche Mines Company Stockholders as designated in the said Trust, and allege that both the Pioche Mines Company and Nevada Volcano Mines Company were in a position to operate the properties respectively owned by them in spite of the fact that said companies were not financed and needed financing, due to the policy adopted by the Government of the United States to aid and encourage such mining organizations as were able to produce lead or zinc or other strategic metals for the benefit of the war effort and allege that the Pioche Mines Company and Nevada Volcano Mines Company both had produced considerable quantities of lead ore and were

in a position to operate and develop further extensions of the same ore bodies which produced these ores, and could have met the requirements for receiving such government financial aid and assistance, and they could have qualified for premium payments allowed on production of strategic minerals.

Wherefore, defendants pray:

1. That plaintiffs' Supplemental Complaint be dismissed and denied with costs.

2. For such other and further relief as may be just, proper and equitable.

DWIGHT, HARRIS, KOEGEL & CASKEY,
/s/ By RICHARD E. DWIGHT.

/s/ CRAVEN & BUSEY

[Endorsed]: Filed April 21, 1947.

[Title of District Court and Cause.]

NOTICE OF MOTION TO ADD PARTIES PLAINTIFF

To: Thatcher, Woodburn and Forman, Clark, Hebard and Spahr, and Plaintiffs Above Named:

Please Take Notice that defendants will bring the motion hereinafter made and stated in writing on for hearing before the above entitled Court in the Courtroom thereof in the United States Post Office, Carson City, Nevada, on the 2nd day of June, 1947,

at the hour of 10 o'clock, a.m. of said day or as soon thereafter as counsel can be heard:

For An Order of Court adding as parties plaintiff upon such terms as may be just the following:

1. Percy H. Clark and Albert P. Gerhard, as individuals.

2. Percy H. Clark and Albert P. Gerhard, representing the majority of the holders of deposited debenture bonds of the defendant, Pioche Mines Consolidated, Inc.

3. John Doe for Robert F. Holden, deceased.

And For An Order substituting the following party:

1. Richard Roe for E. Clarence Miller, now deceased, who died on.....

The foregoing Motions are made and based upon the ground and for the reasons fully stated in Defendants' Answer to the Supplemental Complaint and in Defendants' Counterclaim to the Supplemental Complaint on file herein.

Dated: This 17th day of April, 1947.

/s/ CRAVEN & BUSEY.
/s/ RICHARD E. DWIGHT.

[Endorsed]: Filed April 21, 1947.

[Title of District Court and Cause.]

MOTION FOR LEAVE TO FILE COUNTERCLAIM TO SUPPLEMENTAL COMPLAINT

Pioche Mines Consolidated, Inc., Pioche Mines Company, and John Janney move the Court for leave to file a Counterclaim to the Supplemental Complaint,

a copy of which is attached hereto as Exhibit "X" upon the ground that the transactions, occurrences and events stated therein have happened since the date of the Defendants' Amended Answer. The Counterclaim set forth in Exhibit "X" attached hereto arises out of the transaction and occurrence that is the subject matter of plaintiffs' claim set forth in their Supplemental Complaint on file herein and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. It is in the interest of justice that all issues between plaintiffs and defendants be litigated in this action.

Dated: This.....day of....., A.D., 1947.

CRAVEN & BUSEY,
/s/ By DOUGLAS A. BUSEY.
DWIGHT, HARRIS, KOEGEL & CASKEY,
/s/ By RICHARD E. DWIGHT.
Attorneys for Defendants.

[Endorsed]: Filed April 21, 1947.

[Title of District Court and Cause.]

COUNTERCLAIMS TO SUPPLEMENTAL COMPLAINT FOR A FIRST CAUSE OF ACTION.

For a first cause of action by Defendants against Plaintiffs herein, and others associated with them and by way of Counterclaim:

1. Defendants reassert all the allegations and denials in the original Amended Answer and in the

Answer to the Supplemental Complaint so far as they are material or pertinent, to all intents and purposes as if herein set forth in full, and more particularly but without meaning to limit the foregoing, Defendants reallege and reassert the allegations contained in Paragraphs 18 to 33, inclusive, in said Amended Answer and in Paragraph Sixteen of Defendants' Answer to Supplemental Complaint as if fully herein set forth; and defendants allege that the neglect and refusal of Percy H. Clark, attorney for Fidelity, and the Debenture-holders as represented by the Debenture Holders' Committee and the neglect and refusal of Fidelity-Philadelphia Trust Company, plaintiff in this action, to carry out the provisions of settlement Agreement, as well as their obstruction of the efforts of the other parties in carrying out said Agreement, including various and sundry acts extending from the date of Settlement Agreement down to the present time, constitute a breach of contract and improper conduct; and include among other things, the following:

(a) Said Percy H. Clark and Robert F. Holden of Debenture-Holders' Committee obstructed and delayed obtaining the signature to the First Endorsement to Settlement Agreement, in that they failed and refused to respond to questions asked by the Boston Committee of Stockholders and Creditors at a meeting held for the purpose of authorizing its agent to sign said First Endorsement;

(b) Said Clark and Debenture-holders' Committee delayed and refused to use their best efforts or any efforts whatsoever to obtain the consent of un-

deposited debenture-holders to the Settlement Agreement, as provided in Paragraph VII thereof.

(c) Said Clark and Debenture-holders' Committee failed to secure, or to use any effort to secure, the consent of undeposited Debenture-holders by the time local meetings were held in August, 1942 of Stockholders' groups, who gave the consent of the majority of the Stockholders to the Second Endorsement on said Settlement Agreement, and failed to report the status of said undeposited Debenture-holders by the time of such meetings of local groups of stockholders; and said Clark and Debenture-holders' Committee failed to secure or make any effort to secure, the consents of the holders of such undeposited Debentures for the meetings in Pioche, Nevada of Boards of Directors of the several companies held to secure approval of said Settlement and Merger Agreements and failed to use their best efforts to secure such consents in time for the called Stockholders' Meeting held in Pioche, Nevada, on July 19th, 1943, and failed and refused to give Stockholders' Meetings definite information of the status of said undeposited Debenture-holders with reference to their being bound by said Settlement Agreement.

(d) Said Clark and Debenture-Holders' Committee refused and neglected to notify the officers of Pioche Mines Consolidated that the Committee had failed to obtain consents of the undeposited Debenture-holders to Settlement Agreement, and by reason of such action, Stockholders' Meeting was called for July 15, 1943 with the knowledge of Clark and said Debenture-holders' Committee to act upon proposed

Merger, upon the assumption and representation of said Clark and the Debenture-Holders' Committee that such consents had been secured and would be forthcoming in time for the proposed Stockholders' Meeting, and when the Meeting assembled it was found that said consents were not forthcoming and the status of said consents remained uncertain, and Stockholders' Meeting was adjourned from time to time until December 3, 1943, because of the failure and refusal of said Clark and the Debenture-Holders' Committee and Fidelity prior to that date to make the status of said debentures certain or to give definite assurance that all such Debenture-holders were committed to the Settlement Agreement as written, or to advise as to which of the Debenture-holders had refused to become committed to Settlement Agreement.

(e) Said Clark and Debenture-Holders' Committee and the Stockholders whom they represented, refused and neglected to attend the Stockholders' Meeting except by limited proxy, that prevented cooperation with the meeting in carrying out the Settlement Agreement, especially in connection with the obligations they were to perform as therein required.

(f) Said Clark and Debenture-holders' Committee delayed the approval of a Form for the Merger Agreement, provided for in Settlement Agreement, by insisting upon numerous and unnecessary conferences and by refusing to approve a Form for the Merger Agreement until December 29, 1942.

(g) Said Clark and Debenture-holders' Committee and Fidelity refused and failed and neglected to

approve or disapprove the form of the Income Bond required to be issued by the Merged Company immediately upon the consummation of Merger, a form of which was sent to attorneys for plaintiffs for their objections or approval at the direction of Stockholders' Meeting, and after Income Bonds had been printed according to said form filled-out in names according to Fidelity's list and sent to Fidelity for delivery, the form was objected to by Fidelity and Debenture-holders' Committee creating delay.

(h) Said Clark, the Debenture-holders' Committee and Fidelity delayed and obstructed the Settlement Agreement by filing with the Securities and Exchange Commission, legal objections to the issuance of the new securities, after Fidelity had received same, without authority of or consent from Pioche Mines Consolidated, as a result of which it took until July 31, 1944 to get a counter-legal opinion from the legal department of the Securities and Exchange Commission, to overcome such obstruction so created by Fidelity and Debenture-holders' Committee.

(i) And Fidelity caused their officers and their attorneys to work with said Debenture-holders' Committee and said Clark in various other ways in a joint effort to prevent, obstruct and delay the consummation of Settlement Agreement.

2. That Fidelity-Philadelphia Trust Company has failed and refused and neglected to perform certain of the terms of said Settlement Agreement on their part to be performed, in the following respects:

(a) By Fidelity refusing and delaying to make a definite reply or any proper reply to request made

them by Stockholders' Meeting then in session at Pioche, Nevada for a list of Debenture-holders represented by Fidelity who were committed to the Settlement Agreement as written and who were obligated to accept the new securities as provided under Settlement Agreement, as against those who were not committed and whose debentures would remain as a cash obligation of Merged Company.

(b) By Fidelity sending a list of Debenture-holders who had deposited their bonds with them, to said Stockholders' Meeting being held for the purpose of considering and acting upon proposed Merger, and accompanying said List with letter stating that the new proposed securities were not authorized to be issued to those on the list, thereby confusing said Stockholders' Meeting as to exact status of the Debenture-Holders on said list and delaying the vote of Stockholders' Meeting approving Merger.

(c) By Fidelity refusing to proceed with Settlement Agreement unless and until the payment of Seventy-five Hundred ($7500) Dollars was first made to them in cash, which payment the Settlement Agreement did not provide so to be made, and which demand the Stockholders' Meeting then in session could not meet without prior authorization by the auditors or Directors of Pioche Mines Consolidated, and Fidelity and Debenture-holders' Committee knew that cash was not available to said Defendant Company for said payment:

(d) By Fidelity refusing to affix the issuance stamps required by law to be affixed, to the stock to be delivered to depositing Debenture-holders or to

accept the guarantee of payment by the Bank of Pioche but demanding cash, thus creating another delay;

(e) By Fidelity refusing to acknowledge their obligation to distribute new securities sent them by Pioche Mines Consolidated, the Merged Company, and their refusal to tender same to Debenture Holders in exchange for old Debentures and report the result of such tender;

(f) By Fidelity having their Philadelphia general counsel give a written legal opinion, which their attorney Percy H. Clark submitted to the Securities and Exchange Commission, pursuading or attempting to pursuade said Commission to rule that the issue of new securities, which defendants had sent Fidelity under Settlement Agreement, was in violation of the Trust Indenture Act; and also by Fidelity attempting through their attorneys to secure an opinion from the Eastern Attorneys of Defendant Pioche Mines Consolidated to the effect that said issue of new securities was in violation of law, without joining with said Defendant Pioche Mines Consolidated as requested by said defendants to do in an agreed statement of facts relating thereto;

(g) By Fidelity still continuing to hold up the distribution of new securities after the Securities and Exchange Commission's Legal Department handed over a written opinion that the issue of the securities sent Fidelity under Settlement Agreement was legal, and that neither the Securities Act nor the Trust Indenture Act was violated by the form or by the issuance of said securities.

(h) By Fidelity creating an impasse in the progress of Settlement Agreement, and by working with Debenture-holders' Committee in actions which were intended to create such an impasse, they intended to create and did create a cloud upon the preference feature of the Preference Notes which rendered them unsalable, and by their threats not to perform said Agreement on their part until after the Settlement Agreement was fully consummated.

(i) By other communications to Defendants' attorneys attempting to complicate and delay consummation of the Settlement Agreement; and by various and sundry other acts of Fidelity's officers and attorneys in cooperation with Debenture-holders' Committee which confused, delayed and obstructed the the consummation of Settlement, and by such delay caused defendant Pioche Mines Consolidated to become financially embarrassed *an* incapable of meeting promptly taxes and other carrying charges and expenses,

For A Second Cause of Action

For further action by Defendants against Plaintiffs herein and others associated with them in the nature of counter-claim:

1. Defendants reassert all the allegations and denials in Defendants original Amended Answer to Plaintiffs' Complaint so far as they are material or pertinent to all intents and purposes as if herein set forth in full, and more particularly without meaning to limit the foregoing defendants reallege and reassert the allegations contained in paragraphs Eighteen, Nineteen, Twenty, Twenty-one, Twenty-two,

Twenty-three and Twenty-four, Twenty-six, Twenty-seven and Thirty-three in the said Amended Answer to the original Complaint in this action previously filed.

2. Defendants reassert all the allegations and denials in Defendants' Answer to Supplemental Complaint in this action as if herein fully set forth, and more particularly, without meaning to limit the foregoing, reallege Paragraphs Fourteen and Sixteen of said Defendants' Answer to Supplemental Complaint.

3. Defendants allege that Fidelity-Philadelphia Trust Company, Percy H. Clark, Debenture Holders Committee, Albert P. Gerhard, E. Clarence Miller, Edward C. Dale and Robert F. Holden unlawfully connived and conspired together, each with the others, for the specific purpose of preventing the consummation of the reorganization plan provided for in said Settlement Agreement.

4. Defendants allege that the formation of Debenture-holders' Committee by said Clark, his activity and the activity of said Debenture-holders' Committee in the solicitation of Debenture-holders' request for the institution of the suit, and the institution thereof, by Fidelity; the negotiation of the Settlement Agreement marked "Exhibit A", in bad faith and with intent not to carry out the terms thereof as more fully set forth in Defendants' Answer to Supplemental Complaint, and subsequent delay and obstruction in the execution of the terms of said Settlement Agreement by Fidelity, are all part of the scheme and conspiracy heretofore referred to, on the

part of said Fidelity, Clark and their associates, known and unknown, to hinder and make impossible the refinancing of the defendant Company necessary in order to rebuild its mill destroyed by fire in September, 1929 and thereby enable them to take over for the use and benefit of themselves and their said associates, known and unknown, the valuable properties of these defendants.

5. Defendants allege that the conspiracy herein alleged dates from the time of the Settlement Agreement and continues down to the present time and allege that said conspiracy is a part of this same conspiracy and a continuation of the same obstructionist tactics, conduct and acts of said conspirators fully set forth in Defendants' original Amended Answer on file herewith, and particularly as set forth in Paragraphs 18, 19, 20, 21, 22, 23, 24, 26, 27 and 33 of said Answer, to which reference is herein above made. That said Percy H. Clark was attorney for defendant, Pioche Mines Consolidated, Inc. from the date of its incorporation until January 26, 1939, was attorney for Pioche Mines Company during the same period of time, and in such position said Clark recommended and urged the reorganization of said Pioche Mines Company and the issuance of the Debentures which were to be subscribed by himself, his friends and their associates; and was Vice-President of Pioche Mines Consolidated, Inc. with special duties relating to the debenture accounts and transactions from January, 1929 to about February, 1940, and as such executed the original Trust Agreement between Fidelity Philadelphia Trust Company and defendant Pioche Mines

Consolidated, Inc.; and was one of the attorneys for E. W. Clark & Co. at the time he gave $40,000 of Company Debentures as collateral, without authority to deliver more than $25,500 thereof, to said E. W. Clark & Co. and thereby involved said Pioche Mines Consolidated in their Debenture accounting with certain Debenture subscribers, as set forth more fully in Defendants' Answer herein. Said Percy H. Clark is attorney for Fidelity Philadelphia Trust Company in the institution of this action, and is now such attorney, and said Percy H. Clark is now attorney for the said Debenture-holders' Committee, and has been ever since its formation, and is an individual member thereof, and was and is individually a party to the Settlement Agreement.

That the many and varied and inconsistent positions of Percy H. Clark are in violation of his original relation of fiduciary and position of trust with Defendants, Pioche Mines Consolidated, Inc. and Pioche Mines Company, and have better enabled Percy H. Clark to conspire with said Fidelity Philadelphia Trust Company and said other persons (known and unknown) to obstruct and prevent said reorganized corporation from carrying out and consummating such Settlement Agreement and the plan of reorganization provided for therein, and that said Percy H. Clark's conduct in such respect and that of said Conspirators has been wilfully and intentionally malicious and improper, and designed to greatly injure and damage said Defendants and said reorganized corporation.

6. And allege in pursuance of aforesaid Con-

spiracy that Fidelity and Clark, while under cross-examination in taking of depositions on June 6, 1942, induced the Defendants to enter into the Settlement Agreement; that Plaintiffs falsely and fraudulently represented that they intended to carry out the terms of said Agreement and that the Defendants relied upon said representations and did enter into said Settlement Agreement in good faith; but that said representations were false and intended to deceive, and in truth and fact Fidelity and Clark entered into said Settlement Agreement in bad faith, not intending to carry out its terms and intending merely thereby to further delay and harass the defendants in the development of the Merged Company's properties and procurement of necessary finances, and further intending to induce the Creditors of defendant Pioche Mines Company, of whom your co-defendant, John Janney, is one, to waive their security upon the assets of said Pioche Mines Company intending that plaintiffs might obtain for themselves equal standing in claims upon said assets; and allege it was also the intent of said conspirators to create complications between said merged Company and aforesaid creditors who were displaced in their rights to a preferred claim upon the assets of said Pioche Mines Company.

7. Defendants allege that it is a part of said conspiracy to contrive to use said Settlement Agreement as a means of getting the non-deposited debentures, which did not at first come in with the Clark group in their action, to combine with other debentures in making a solid block to be used in negotiations with

the Company in arriving at harsher terms of settlement Agreement, in disregard of terms agreed to as of June 8, 1942, and that plaintiffs had no intention of complying with terms of said settlement agreement but intended to refuse to go through with said agreement on one pretext or another making use of said agreement as a basis for conducting further negotiations and getting terms more in accordance with the objects of their conspiracy.

8. That it is a part of said conspiracy that the Defendant, Pioche Mines Consolidated, was to be coerced into making a lease of its properties and to have included in said lease the properties of Pioche Mines Company and Nevada Volcano Mines Company, and all properties on such terms and to such persons as suited the purpose of said conspiracy, and in the event said company was not successful in leasing its properties it was the intent of the aforesaid conspirators not to turn in their bonds and it was their intent to leave the Defendant Company in the position of having induced other creditors to turn in their obligations as a part of the merger and to take income notes therefor, thus depriving such other creditors, particularly the emergency creditors aforesaid of a favorable credit position which constituted a prior claim to the assets of the Pioche Mines Company, all as more fully set forth elsewhere in defendants' Answer, and it was the intent of said conspirators that the property was to be held in idleness while the mine workings deteriorated and caved in and became inaccessible, and timbers decayed, machinery

became obsolete, personnel and organization became discouraged and disbanded.

9. During the pendency of this action and ever since shortly after the filing of plaintiffs' complaint herein, the extensive properties, mining claims and patented claims of defendants, and of said merged corporation have been under levy of attachment issued herein, thereby preventing their development, operation and mining ever since the date of the said settlement agreement, to wit, July 8, 1942, and said development and operation of said properties and mining and patented claims have been prevented by said attachment and by the wrongful acts and conduct elsewhere set out in defendants' Answer. During such period of time the market value of strategic metals abounding in said properties, to wit, lead, zinc and copper, has been at an extremely high level. During such period of time, grants and allowances were made by the United States Government for the purpose of developing and blocking out ore bodies containing such strategic metals.

10. Defendants allege that the action of Fidelity, in failing and refusing to distribute the new Income Bonds and Stock to those entitled thereto, and the action of Fidelity Philadelphia Trust Company and of Debenture-Holders' Committee and the Debenture-holders they represent, in failing and refusing to complete the Settlement Agreement, and in failing to use their best efforts to remove the cloud to title and doubt of the preference-feature of the Preference Notes, which doubt had been raised by the improper conduct of Fidelity and Debenture-Holders' Commit-

tee as hereinbefore alleged, and their failure to comply with the terms of Settlement Agreement—and their action in delaying the distribution of the new securities by unilateral action with the Securities & Exchange Commission—and various other acts as more fully set forth in Defendants' Answer to Plaintiffs' Supplemental Complaint all caused doubts in the minds of prospective investors in the Preference Notes and all were done pursuant to said conspiracy.

11. Defendants allege that by the failure of Fidelity and the Debenture-Holders' Committee to consummate the Settlement Agreement on their part as therein provided, defendant Pioche Mines Company has been deprived of the control and ownership of its mining properties and patented mining claims and the right to enter same and take ores therefrom during the period of time from July 8, 1942 down to the present time, and have been prevented from producing strategic metals of lead and zinc for the benefit of the Government of the United States in its war emergency, and have been deprived of the benefit of the aid that would have been rendered to such effort by way of premiums and bonuses on metals produced, and aid from the Reconstruction Finance Corporation in financing such operation of said Pioche Mines Company properties. And allege that the said property of Pioche Mines Company borders on the south and west properties which have opened up and developed massive bodies of zinc, lead ores which are among the largest zinc-lead ore bodies in the western part of the United States, and that a large area of Pioche Mines Company property contains this same

geological structure which has produced said ore bodies.

12. Defendants allege that by the failure of Fidelity and the Debenture-Holders' Committee to consummate the Settlement Agreement on their part as therein provided, Nevada Volcano Mines Company has been deprived of the control and ownership of its mining properties and patented mining claims and the right to enter same and take ores therefrom during the period of time from July 8, 1942 down to the present time, and have been prevented from producing strategic metals of lead and zinc for the benefit of the Government of the United States in its war emergency, and have been deprived of the benefit of the aid that would have been rendered to such effort by way of premiums and bonuses on metals produced, and aid from the Reconstruction Finance Corporation in financing such operation of said Nevada Volcano Mines Company properties.

13. By reason of the wrongful acts and conduct and conspiracy of said conspirators, defendants and said reorganized corporation have been deprived of very large and substantial profits which otherwise would have accrued to them, all to their great damage in the sum in excess of Three Million Dollars ($3,000,000.00).

14. Percy H. Clark and Albert P. Gerhard, as individuals, and the successors or personal representative of Robert F. Holden, now deceased, are indispensable parties to this action and individual persons who ought to be parties if complete relief is to be accorded between those already parties.

Percy H. Clark and Albert P. Gerhard, representing a majority of the holders of deposited debenture bonds of defendant, Pioche Mines Consolidated, Inc., are indispensable parties necessary to fairly insure the adequate representation of debenture-holders of defendant, Pioche Mines Consolidated, Inc., who have deposited their debentures with Fidelity-Philadelphia Trust Company, the character of the right sought to be enforced for and against such debenture-holders being several and there being common questions of law and fact affecting the several rights of such debenture-holders, and common relief being sought for and against them. None of said persons have been made parties, but all of said persons are subject to the jurisdiction of the Court, duly having appeared personally in this action in their respective individual and class capacities, as aforesaid, by the filing herein of the aforesaid agreement or stipulation of settlement and by causing to be instituted as action set forth in a Supplemental Complaint to enforce the terms of said agreement or stipulation. Said persons otherwise to the extent they are Bond-holders, Stockholders or Creditors of defendants, Pioche Mines Consolidated, Inc., or Pioche Mines Company, all within the jurisdiction of this Court, and they are indispensable parties to this action and ought to be made parties thereto if complete relief is to be accorded between those already parties.

Wherefore, defendants pray:

1. That this Court enter its Order joining Percy H. Clark, Albert P. Gerhard and the successors

or personal representative of E. Clarence Miller and Robert F. Holden, with Fidelity-Philadelphia Trust Company and Edward C. Dale as individual plaintiffs herein, and that this Court enter its Order joining Percy H. Clark and Albert P. Gerhard as a plaintiff herein in their individual capacities and as representing a majority of the holders of deposited Debenture Bonds of defendant, Pioche Mines Consolidated, Inc.

2. That Pioche Mines Consolidated, Inc., the merged corporation, have judgment against Fidelity-Philadelphia Trust Company, Edward C. Dale and against each and all of said parties so joined, in the sum of Three Million ($3,000,000) Dollars.

3. That a permanent injunction be issued enjoining defendant Pioche Mines Consolidated, Inc. from paying any dividends on the stock of the Company owned directly, or indirectly by Fidelity-Philadelphia Trust Company, Percy H. Clark, Robert F. Holden, Albert P. Gerhard, or such other persons as might be found to be parties to Conspiracy alleged in this Cross-Complaint, or from paying any interest payments on Income Bonds or Income Notes of this Company owned directly, or indirectly by Fidelity-Philadelphia Trust Company, Percy H. Clark, Robert F. Holden, Albert P. Gerhard, or such other persons as might be found to be parties to Conspiracy alleged in this Cross-Complaint, until after such parties have fully performed such Order as may be entered by this Court, and fully discharged such payments as may be decreed to be due

from said parties to all or any of the defendants herein.

4. That the Court enter injunctions on such Orders as may be just and equitable against any of the plaintiffs or any and all of said parties who may be joined herein by Order of the Court, to prohibit them or any of them from continuing their part in the conspiracy alleged, or continuing their unlawful acts and interferences against the Merged Company, its Officers and Directors.

5. That this Court enter its Order directing plaintiffs and all of said parties so joined herein to fully perform the remaining unperformed obligations of said Settlement Agreement, to be performed by them respectively.

6. For such other and further relief as may be just and equitable.

DWIGHT, HARRIS, KOEGEL & CASKEY

/s/ By RICHARD E. DWIGHT,

CRAVEN & BUSEY

[Endorsed]: Filed July 29, 1948.

[Title of District Court and Cause.]

MOTION FOR ORDER DIRECTING DEPOSIT IN COURT

Defendant, Pioche Mines Consolidated, Inc., hereby moves the above entitled Court, pursuant to Rule

64 of the Rules of Civil Procedure for the District Courts of the United States, and Nevada Compiled Laws Section 8747, for an order of this Court directing plaintiff, Fidelity-Philadelphia Trust Company to deposit with this Court, or the properly authorized officers of this Court, all of the debentures issued by defendant, Pioche Mines Consolidated, Inc., which are now held by plaintiff, Fidelity-Philadelphia Trust Company as set forth in the Supplemental Complaint on file herein, together with the authority for holding them, said debentures and authority to be held in the custody of this Court, subject to the further order of this Court, to be made after notice to all parties to this action; said deposit to include, as well as said debentures, every evidence of right arising therefrom or connected therewith, for the reasons as set forth in the Affidavit of John Janney attached hereto and marked Exhibit "A" and in the Affidavit of E. G. Woods attached hereto and marked Exhibit "B".

Dated October 21st, 1947.

/s/ FRANCIS T. CORNISH

Attorney for defendant, Pioche Mines Consolidated, Inc.

NOTICE OF MOTION

To: Messrs Thatcher & Woodburn
Messrs Clark, Hebard & Spahr

Please Take Notice: that the undersigned will bring the above motion on for hearing before this Court at its courtroom at Reno, Nevada, on the 10th

day of November, 1947, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated October 21st, 1947

/s/ FRANCIS T. CORNISH
Attorney for defendant, Pioche Mines Consolidated, Inc.

Acknowledgment of Service attached.

EXHIBIT "A"

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR DEPOSIT IN COURT

State of Nevada,
County of Lincoln—ss.

John Janney, being first duly sworn, deposes and says:

That he is one of the defendants above named, and an officer, to wit: the President of defendant, Pioche Mines Consolidated, Inc., a corporation.

Affiant incorporates by reference in this affidavit the Amended Answer, the Answer to the Supplemental Complaint, and a certain proposed counterclaim, a copy of which is on file, attached to a motion for leave of the Court to file the original thereof;

Affiant incorporates by reference also a certain Settlement Agreement dated July 8, 1942, a copy of which is filed in the records of this case as an Exhibit to the Supplemental Complaint herein, which

Exhibit "A"—(Continued)

Settlement Agreement purports to arrive at a settlement of the issues raised in the original Complaint, the Amended Answer, and in Defendants' Counterclaim to be filed herein, which Settlement Agreement provides among other things for the issuance of new 30-year 4% Income Bonds to replace the old debentures of defendant, Pioche Mines Consolidated, Inc., for the issuance of Preference Notes to provide cash for the payment of taxes, other expenses and certain obligations of Defendant Consolidated, as set forth in said Settlement Agreement, and also provides that the mining properties of the Merged company are to be turned into an enterprise profitable to the creditors and stockholders of the merged companies at the earliest possible moment.

Affiant avers that he was present at the meetings of stockholders and all adjournments thereof held for the purpose of consummating the aforesaid Settlement Agreement and voting upon the proposed Merger, provided in said Agreement, and was present also at the meetings and the adjourned meetings of the Board of Directors of Defendant, Pioche Mines Consolidated, Inc., held for the purpose of issuing the new securities and otherwise carrying out the provisions of said Settlement Agreement;

That the action for which both the Stockholders' Meeting and the Directors' meetings were held was obstructed, delayed and thwarted during a period of time which extended from July, 1942, to March, 1945, and from that date down to the present date,

Exhibit "A"—(Continued)

by confusion, doubts and uncertainty in regard to the issuance of the new bonds in payment of the old debentures;

Affiant avers that the confusion, doubt and uncertainty was in the first instance caused by Fidelity-Philadelphia Trust Company and the Debenture-Holders' Committee, and Percy H. Clark, Chairman thereof, in failing and refusing in spite of repeated demands therefor to state definitely which of the debenture-holders had given their consent to the Settlement Agreement, and which had withheld their consent, as provided in Paragraph VII thereof;

That further confusion was caused by Fidelity-Philadelphia Trust Company and Debenture-Holders' Committee who assumed various inconsistent, conflicting and incorrect positions with reference to the status of said debentures and in relation to the settlement, and made use of the inaccuracies in the debenture accounts which had been kept in Philadelphia in the office of Percy H. Clark, so as to confuse, delay and prevent the prompt carrying out of the Settlement Agreement as required by the terms thereof;

That the extent of said confusion and the manner of bringing same about are set forth in letters and telegrams which passed between the Stockholders' Meeting and the Directors' Meeting on the one hand, and Fidelity-Philadelphia Trust Company and Percy H. Clark and the Debenture-Holders' Committee on the other hand, copies of which are hereto attached. The communications to and from

Exhibit "A"—(Continued)

the Stockholders' Meeting being marked as Exhibit SM 1 to 13 inclusive, and the communications to and from the Directors' Meeting being marked Exhibit DM 1 to 39, inclusive;

That the accounts relating to the debenture issue were kept by Percy H. Clark who was appointed a special Vice-President of defendant Pioche Mines Consolidated, to be responsible for the issuance of the debentures and for keeping the accounts relating thereto; and that said Percy H. Clark refused to furnish an audit of his accounts when request was made therefor as is shown by Exhibits PC 1, 2 and 3;

That said Percy H. Clark was at that time also attorney for defendant, Pioche Mines Consolidated, Inc.; and that said Percy H. Clark is now the attorney for the Fidelity-Philadelphia Trust Company in this action, and is also Chairman of the Debenture-Holders' Committee and attorney for the Debenture-Holders;

That Fidelity-Philadelphia Trust Company, contrary to the practice of corporate trustees in such matters, failed in its duties as Trustee in not requiring an audit of the accounts of said Percy H. Clark as a basis for said Trust Company certifying the amounts of the debentures issued, and outstanding by defendant, Consolidated, and that Fidelity-Philadelphia Trust Company made a certification of the debenture issue without the backing of a proper audit to confirm its statements of said debenture account;

Exhibit "A"—(Continued)

That the lack of said audit and the resultant uncertainty was used by Fidelity-Philadelphia Trust Company and Debenture-Holders' Committee to create confusion, which confusion has been used by them in holding up the carrying out of the Settlement Agreement, and has created doubts in the minds of prospective purchasers of Preference Notes, to be issued under Paragraph VI of Settlement Agreement, by rendering uncertain the extent to which said Preference Notes would be a first claim upon the assets of the surviving Company, as was intended in the Agreement;

That said doubts may now be dispelled by the deposit of the debentures now alleged to be on deposit with Fidelity-Philadelphia Trust Company within the keeping of this Court and that if this Court will order said Debentures to be so deposited that such order when carried out by Plaintiffs would avoid the risk of any change of ownership or transfer of possession of said debentures, as long as held within the safe keeping of this Court, since said debentures are bearer-certificates the ownership of which can be passed from hand to hand without registration;

That in the process of carrying out said Settlement Agreement the sale of Preference Notes was and still is the next step which must be taken before cash can be provided which must be in hand if settlement is to be carried out; that the sale of said Preference Notes is the method provided for in said contract and the only method provided for raising the cash to implement the carrying out of said con-

Exhibit "A"—(Continued)

tract, and that the sale of said Preference Notes has been retarded, delayed and made impossible by the action of Fidelity-Philadelphia Trust Company, the Debenture-Holders' Committee, and the Debenture-holders they represent, in creating the aforesaid uncertainty, doubts and confusion and the resulting lack of confidence;

That if defendants are allowed to inspect said debentures along with the signed agreements under which they are deposited, and their auditor is enabled to certify which debentures are so deposited with the Court, and on what terms and conditions they are deposited, a cloud on the sale of Preference Notes would be removed, and the offering for sale of Preference Notes could be made with definite representations as to the true status of said debentures, and there would thereby be facilitated the important matter of providing cash from the sale of said Preference Notes to meet necessary and proper expenditures by defendant Pioche Mines Consolidated, Inc., which sale of said Preference Notes is the only method of obtaining such cash provided for in the Settlement Agreement, to which all parties to the contract are committed to give their best efforts;

That the confusion in the bond account was persisted in by Fidelity-Philadelphia Trust Company down to and beyond February, 1945, as disclosed in a letter from Thomas B. Ringe, attorney for "Fidelity" to Richard E. Dwight, attorney for defendant, Pioche Mines Consolidated, Inc., dated Febru-

Exhibit "A"—(Continued)

ary 27, 1945, reference to which is here made, (Exhibit DM 25);

That the uncertainty and lack of confidence in the Preference Notes authorized under the Settlement Agreement aforesaid, can now only be quickly dispelled to the satisfaction of prospective purchasers of preference notes by the deposit of the debentures in Court;

Affiant is informed that claims have been made to a Director of defendant, Pioche Mines Consolidated, Inc., that debentures heretofore alleged to be on deposit with Plaintiff, Fidelity-Philadelphia Trust Company, are now owned by persons whose names do not appear on the list furnished by Fidelity-Philadelphia Trust Company to said defendant, Pioche Mines Consolidated, Inc., for the purpose of issuing new Income Bonds to be exchanged for said debentures, which said persons are not parties, and therefore unknown to Affiant or to defendant, Pioche Mines Consolidated, Inc.; and affiant is informed, and believes, and therefore states, that if, and only if, said debentures are held in status quo, and without further transfer until the rights of all the parties of this action have been determined, can the rights of the parties under the Settlement Agreement be fully protected and the confusion and uncertainty as to what debenture holders are entitled to receive securities in the new company be determined;

And if said status quo is maintained as aforesaid by deposit of said debentures with this Court, no

Exhibit "A"—(Continued)

harm can result to any of the parties concerned in this litigation, but on the contrary, such deposit with the Court will facilitate the wind-up and settlement of the debenture account and make feasible the sale of Preference Notes as provided in Paragraph VI of the Settlement Agreement, and thus afford an opportunity to defendant, Pioche Mines Consolidated, Inc., to provide the cash required to complete the settlement;

And that if said debentures are not deposited with the Court the sale of the Preference Notes will be delayed further, and the debenture account will not be quickly cleared up by any means satisfactory to prospective investors in said Preference Notes.

Affiant further avers that the past actions of the plaintiffs, done in pursuance of the conspiracy described in defendants' Counterclaim in this action, have created a condition which has placed defendant, Pioche Mines Consolidated, Inc., at a ruinous disadvantage in negotiating a Lease of its properties under terms which will assure an income and which, by its terms, will be profitable to said Company, which Lease all parties by Paragraph IX of the Settlement have agreed to use their best efforts to obtain.

/s/ JOHN JANNEY.

Subscribed and sworn to before me this 20 day of October, 1947.

[Seal] /s/ GLENDA P. QUIRK,

Notary Public in and for the County of Lincoln, State of Nevada.

EXHIBIT PC-1

Law Offices, Clark, Hebard & Spahr,
1500 Walnut St. Building, Philadelphia

Mr. John Janney, February 3, 1940
Pioche, Nevada.

Dear John:

Please accept my resignation as Vice-President of Pioche Mines Consolidated, Inc., to take effect immediately.

Very truly yours,

PHC:M /s/ PERCY H. CLARK.

EXHIBIT PC-2

Mr. Percy H. Clark, February 14, 1940
1500 Walnut Street,
Philadelphia, Pennsylvania

Dear Sir:

Your letter requesting that this company accept your resignation as Vice-President cannot receive consideration until your account has been audited and accepted.

As Vice President you have had entire responsibility for the issuances of bonds and script and no satisfactory accounting has ever been rendered by you to this company. Mr. Lieb, the auditor for your committee, was dissatisfied with your statement of your account and your certificate which accompanied it. He agreed that an audit was necessary and that he would make such an audit on his re-

turn to Philadelphia. We await his or some other satisfactory audit and its acceptance by this company before relieving you of this responsibility by accepting your resignation.

Very truly yours,

PIOCHE MINES CONSOLIDATED,
/s/ By JOHN JANNEY, President.

EXHIBIT PC-3

Law Offices, Clark, Hebard & Spahr,
1500 Walnut Street Building, Philadelphia

Mr. John Janney, February 21, 1940
Pioche Mines Consolidated, Inc.,
Pioche, Nevada.

Dear John:

I have your letter of February 14, declining to accept my resignation as Vice-President until my account has been audited and accepted. I definitely decline to serve any longer as Vice-President of your Company. Recently I have had no authority except to sign scrip certificates in cases of issue in exchange for coupons and in cases of transfer, and I will no longer continue to perform this function.

Mr. Lieb tells me that the statements you attribute to him in your letter are not in accord with his recollection. However that may be, I have no objection to an audit, but do not know what you want to audit. Subscriptions to the debentures of the first issue were secured to the amount of $419,-600. payable at the office of E. W. Clark & Co. and

debentures to this amount were certified by Fidelity Philadelphia Trust Co. upon delivery to it of written orders provided for in the Trust Agreement signed by me as Vice President pursuant to authority conferred upon me by resolutions of your Board, certified copies of which are on file with Fidelity. Subscriptions, as received, were deposited to the credit of the account of Pioche Consolidated with E. W. Clark & Co. As subscriptions were paid in full the debentures were delivered to the subscribers. I had nothing to do with these debentures after they were certified by Fidelity and delivered to E. W. Clark & Co., nor have I had anything to do with the cash proceeds, all of which I understand have been withdrawn by Pioche Consolidated.

$60,000 of additional debentures of the first issue were certified on my written order, at your request, and delivered by registered mail to District National Bank, Washington, D. C., and Fidelity Philadelphia Trust Co. holds a registered receipt for these debentures. I have been advised by Fidelity that $3300 of the debentures issued as above were subsequently converted into stock, reducing the amount of the outstanding debentures of this issue to $476,300.

In my letters to Mr. Woods of the past summer I have given him all of the above facts in more detail, as well as others with regard to the scrip and the coupons in exchange for which the scrip was issued, together with certificates of Fidelity and Evans Smith, relating to the outstanding debentures

and scrip. The figures I have given Mr. Woods balance with the figures given by Fidelity and Evans Smith, all of which are in accord with the entries on the books of Pioche Consolidated as shown by Mr. Lieb's report. What is there that I have done in this connection which you want to have audited?

The facts with regard to the debentures of the second issue have all been given to Mr. Woods. They are in accord with the certificates given by the Fidelity and Evans Smith, check with your books, and all cash received has been deposited to the credit of Pioche Consolidated and been withdrawn by that Company. This situation is somewhat more complicated than that of the first series of debentures because of the fact that you subscribed for $50,000 of debentures of the second issue and did not make payment through E. W. Clark and Co. Neither Lee nor Brown have paid their subscriptions in full, Albert Gerhard took your note for the amount subscribed rather than debentures, and the unpaid subscriptions and $40,000 of debentures were pledged as collateral for E. W. Clark & Co.'s $2000 loan. I have already given you all the information I have with regard to all of these matters and will not repeat it in this letter.

Let me know what you want to have audited.

Very truly yours,

/s/ PERCY H. CLARK

PHC:M

Carbon copy sent to 551 Fifth Avenue, New York, N.Y.

EXHIBIT SM-1

[Telegram]

Pioche, Nevada, August 6, 1943

Debenture Holders' Committee,
Percy H. Clark, Chairman,
1500 Walnut St. Bldg., Philadelphia, Pa.

Your telegram August 5th received today fails to answer our telegram August 4th. We ask you to clear doubts raised by your agreements which constitute conditional assents and which can be construed as an out for certain debenture holders after suit is dismissed. Our telegram asks what bonds are and what are not definitely committed to exchange when vote of stockholders ratifies merger agreement and same is filed with Secretary of State, which under the Nevada Statute completes the merger. This question your telegram does not answer. The bonds you represent that will remain outstanding after merger is voted constitutes a doubt which we ask you to clear up. You can clear this doubt by direct answer to our question.

E. G. Woods, Secretary

EXHIBIT SM-2

[Telegram]

Philadelphia, Penn., August 7, 1943

E. G. Woods, Secretary

Pioche Mines Consolidated Inc., Pioche, Nevada.

Answering your nightletter 6th committee is of

opinion all Debenture Holders represented by our committee except only Page owing $400. of debenture will be definitely committed to complete reorganization in accordance with terms of two agreements when merger is consummated. Will confirm by air mail letter of today.

Pioche Debenture Holders Committee
By Percy H. Clark and Albert P. Gerhard

EXHIBIT SM-3

[Telegram]

Pioche, Nevada, August 10, 1943

Debenture Holders' Committee,
Percy H. Clark, Chairman,
1500 Walnut Street Bldg.,
Philadelphia, Pa.

In re your telegram seventh if auditor will certify that the bonds represented by your committee are obligated to accept new securities for old in accordance with terms of settlement agreement, obligation effective as soon as merger is consummated by stockholders approving merger contract and filing same with Secretary of State, would that conform to your authority and bind your debenture holders as implies in your telegram of August Fifth. Please answer Yes or No.

E. G. Woods, Secretary

EXHIBIT SM-4

[Telegram]

August 13

Pioche Mines Consolidated
Pioche, Nevada

Answer your telegram of tenth is Yes.

P. H. Clark, H. P. Gerhard

EXHIBIT SM-5

[Telegram]

Pioche, Nevada, November 29, 1943

Debenture Holders' Committee,
c/o Percy H. Clark
1500 Walnut Street Bldg.,
Philadelphia, Pa.

In absence of confirmation from depositary and to clear up ambiguous and conflicting statements from your committee stockholders' meeting requests you to confirm or deny your letter of August fifth and telegram of August thirteenth as they apply to list of deposited debentures, which we have just received from the Trust Company.

Stockholders' Meeting,
By E. G. Woods, Secretary

EXHIBIT SM-6

[Telegram]

November 30, 1943

E. G. Woods, Secretary,
Pioche Mines Consolidated, Inc.,
Pioche, Nevada

Answering your night letter we confirm our letter of August fifth and telegram of August thirteenth as they apply to list of deposited debentures sent you by Fidelity on November twenty second with counterpart of our letter of same date Stop Of course other parties to settlement agreement are correspondingly bound and must also perform their obligations contemporaneously.

Pioche Debenture Holders' Committee
By Percy H. Clark and Albert P. Gerhard

EXHIBIT SM-7

[Telegram]

Pioche, Nevada, November 30, 1943

Pioche Debenture Holders' Committee,
c/o Percy H. Clark, Chairman
1500 Walnut Street Bldg.,
Philadelphia, Pa.

Your reply to our telegram of yesterday has double meaning. We ask you to be specific. Purpose of telegram yesterday was given you to understand that if there are any named on Trust Company list who are not obligated as you have represented to us in your letter of August fifth and telegram of Au-

gust thirteenth Stockholders' Meeting should know who they are. Meeting requests that you specifically name which if any on said list are not so obligated.

Stockholders' Meeting,
By E. G. Woods, Secretary.

EXHIBIT SM-8

[Telegram]

Philadelphia, Pa., December 1, 1943

E. G. Woods, Secretary,
Pioche Mines Consolidated, Inc.,
Pioche, Nevada.

All on the list are obligated and all deposited bonds coupons and scrip will be surrendered for cancellation contemporaneously with final closing not later than December 31, 1943.

Pioche Debenture Holders Committee,
By Percy H. Clark and Albert P. Gerhard

EXHIBIT SM-9

[Telegram]

Pioche, Nevada, December 1, 1943

Pioche Debenture Holders' Committee,
1500 Walnut Street Bldg.,
c/o Percy H. Clark, Chairman,
Philadelphia, Pa.

You again evade question asked your committee by Stockholders' Meeting. You say all on the list are obligated. Are they all obligated to the terms

of Settlement Agreement as written. Please answer Yes or No.

Stockholders' Meeting
By E. G. Woods, Secretary

EXHIBIT SM-10

[Telegram]

Philadelphia, Pa., December 2, 1943

John Janney, President,
Pioche Mines Consolidated, Inc., Pioche, Nevada

Wood's night letter of first received. Committee has been guilty of no evasion and refuse to answer further unnecessary questions. If your Stockholders' Meeting fails to authorize the merger or you fail to arrange with Thatcher and Woodburn for a closing and the reorganization is not consummated the sole responsibility will rest on you as committee is ready and willing to perform its every obligation as agreed.

Pioche Debenture Holders' Committee,
By Percy H. Clark and Albert P. Gerhard

EXHIBIT SM-11

[Telegram]

Pioche, Nevada, December 2, 1943

Pioche Debenture Holders' Committee,
c/o Percy H. Clark, Chairman
1500 Walnut St. Bldg., Philadelphia, Pa.

Your telegram December second has been sub-

mitted to adjourned Stockholders' Meeting. I am instructed to quote from your telegram following Quote Committee is ready and willing to perform its every obligation as agreed. Unquote Your obligation contained in Clause Seven of Settlement Agreement we now quote as follows: Quote The Debenture Holders' Committee agrees to use its best efforts to obtain the consent of all of the undeposited debentures to this plan of reorganization. Unquote Stockholders Meeting has asked your committee for specific information so that it would know which of the designated debentures have consented to the Contracts of Settlement. I am requested to notify your committee that the Stockholders' Meeting is adjourned to December 9th, and unless you have a list for the meeting of those of the debentures designated in above quoted contract whose consent to the terms of the Settlement Agreement you have not obtained the responsibility will be with your committee and in that case the meeting may assume that your telegram of November thirty is intended to advise us that all of the debenture holders contained in list from Trust Company have assented to the terms of the Settlement Agreement.

E. G. Woods,

Secretary

EXHIBIT SM-12

Law Offices Clark, Hebard & Spahr
1500 Walnut Street Building, Philadelphia 2

December 3, 1943

E. G. Woods, Secretary
Pioche Mines Consolidated Inc.
Pioche, Nevada

Dear Mr. Woods:

The assumption in your night letter of the second is correct.

Very truly yours,

Pioche Debenture Holders' Committee
By /s/ Percy H. Clark
By /s/ Albert P. Gerhard

mac

EXHIBIT SM-13

Copy Air Mail

Law Offices Clark, Hebard & Spahr
1500 Walnut St. Bldg., Philadelphia 2

August 5, 1943

E. G. Woods, Secretary
Pioche Mines Consolidated, Inc.
Pioche, Nevada

My dear Mr. Woods:

This will acknowledge receipt of your letter of July 29, 1943, addressed to me as well as letter dated July 30, 1943, addressed to Messrs. Percy H. Clark, Albert P. Gerhard, Robert F. Holden, members of Debenture-Holders' Committee and signed "Boston

Committee of Stockholders and Creditors by Augustus L. Putnam and Richard K. Baker."

Both of these letters are based on what we consider a wrong construction of the assent to the plan signed by the holders of outstanding debentures which is entirely inconsistent with the real purpose of the document. This form of assent when prepared was sent to Mr. Dwight and he showed it to Mr. Janney and no such construction as is presented in these letters was intended or suggested.

The first paragraph of the assent definitely assents to the merger on the terms and conditions and in the mode, manner and basis set forth in the Settlement Agreement and the Merger Agreement. This is an unconditional assent and complies literally with the obligation imposed upon the Debenture-Holders' Committee by Article VII of the Settlement Agreement.

The last paragraph of the assent does not impose a condition on the first paragraph. It deals with a different matter; namely, the deposit of the bonds with Fidelity under the Pioche Debenture-Holders' Agreement. It gives the Committee a hold on the debentures held by the assenting debenture holders similar to that which they have on the deposited debentures and supplements the assent by a definite agreement to deposit in the event the reorganization is consummated.

The merger will be completed as soon as the stockholders of the several companies at meetings convened as provided in the Nevada Statute vote to approve the Settlement Agreement and the Merger

Agreement, and the Merger Agreement properly certified is filed with the Secretary of State of Nevada. The so-called condition contained in the second paragraph of the form of assent signed by the holders of outstanding debentures has no bearing on the consummation of the merger.

In order to clear up any doubt in the minds of any of the stockholders as to the deposit of outstanding debentures by debenture-holders who have signed the assent, our Committee has arranged with Mr. Dwight to ask for the deposit of the bonds now with the understanding that the depositors may withdraw these bonds in the event the reorganization is not consummated on or before December 31, 1943.

Messrs. Putnam and Baker in their letter of July 30 written on behalf of the Boston Committee of stockholders and creditors at the top of page 3 suggest an alternate method of curing the alleged defect. The undersigned constituting the majority of the Debenture-Holders' Committee desire to accept Messrs. Putnam and Baker's suggestion. The construction of the assent above set forth constitutes the opinion of the Committee as to the real meaning of the form of assent which has been signed by the holders of outstanding debentures as listed in our recent letters and this opinion can be read into and considered part of the assent.

This letter is signed on behalf of the Debenture-Holders' Committee by Messrs. Gerhard and Clark representing a majority of the Committee. Mr. Holden, the third member of the Committee, has

been very ill for several weeks and although he is improving, he is not allowed at the present time to discuss any business matter whatsoever.

Very truly yours,

Pioche Debenture Holders' Committee under Debenture-Holders' Agreement dated as of February 1, 1939

By /s/ Percy H. Clark
/s/ Albert P. Gerhard

mac

EXHIBIT DM-1

Richard E. Dwight, Esq. May 2, 1944
100 Broadway, New York

Securities received from Pioche Consolidated by Fidelity seem to have been issued in disregard of clear terms of Trust Indenture Act and company has failed to pay original issue tax on the income bonds. Fidelity embarrassed to handle these securities and plans to consult S. E. C. as to their obligations and responsibilities. I have persuaded Fidelity to defer visit to S. E. C. until Saturday, May 6 to give me chance to communicate with you. Will be in New York Thursday for two thirty appointment. Can see you either in morning or after by appointment. Please advise.

Percy H. Clark

Charge to: Clark, Hebard & Spahr, 1500 Walnut Street Building.

EXHIBIT DM-2

Robert F. Holden, May 6, 1944
Albert P. Gerhard,
Percy H. Clark, Chairman,
Debenture Holders' Committee
Philadelphia, Pa.

Gentlemen:

A letter dated May 2, 1944, signed by Percy H. Clark has just been presented to the Board meeting. This reads as follows:

> "I enclose for your information copy of my telegram today to Mr. Dwight."

This letter is unintelligible as is the copy of telegram enclosed to Mr. Dwight.

Because of the possibility that this brief communication, combined with no advices being received by us from the Trust Company, may indicate a continuation of the policy of delay and obstruction in the performance of the settlement agreement, I am directed to notify your committee that any embarrassments or any delays created by communications between your committee or the Trust Company and parties not signatories to the settlement agreement or their attorneys are most regrettable in view of the delays already created by your committee, and that your action is contrary to the spirit, intent and definite provisions of the settlement agreement.

We call to your attention the following:

First: The settlement agreement provides that the securities are to be delivered to the Fidelity

Philadelphia Trust Company on account of the debenture holders' committee.

Second: We are advised that the Revenue Act provides as follows: "Chapter 1, Art. 4, Delivery Essential.—A bond is not issued within the meaning of the law unless and until it is delivered."

Third: The settlement contract comprehends that the Fidelity Philadelphia Trust Company shall make delivery of the bonds in exchange for old bonds under an agreement between them and the debenture holders, and further provides for the payment of issue stamps from the sale of preference notes.

We therefore construe your telegram to mean that the debenture holders' committee will not or cannot arrange with the Fidelity Philadelphia Trust Company to provide necessary cash for the issue stamps to be affixed to the bonds in the aggregate amount of $593.89, and we have this day been advised by the Bank of Pioche that they have telegraphed the Trust Company guaranteeing the payment of the issue stamp tax requirements. No transfer stamps are required under the provisions of the Revenue Act for the exchange of new securities for old under a statutory merger, and to avoid misunderstanding this has been stamped on the certificates.

By Order of the Board of Directors.

.....

Secretary.

EXHIBIT DM-3

Philadelphia, Penn., 1124 am May 9, 1944
John Janney, Pres. Pioche Mines Co. Cons.
Pioche, Nevada

We have today telegraphed Bank of Pioche as follows:

"Re your night letter telegram May seven we could not deliver bonds without original issue stamps affixed and would require payment in advance Stop Pioche Mines has been advised that income bond and notes should be qualified under trust indenture act of 1939 stop Please advise by return wire your instructions regarding disposition of securities shipped to us Stop If we do not hear from you by ten am Wednesday May tenth will consult Securities and Exchange Commission so that our position will be free of embarrassment Stop We are sending copy of this telegram to Mr. Janney."

318 pm Fidelity Philadelphia Trust Company

EXHIBIT DM-4

Pioche, Nevada, May 9, 1944

Fidelity Philadelphia Trust Co.,
Philadelphia, Pa.

Re telegram 9th, Bank of Pioche is instructed to telegraph cash to cover original issue stamps. Dwight advises no change in bonds needed because of Trust Indenture Act. You are instructed to stamp bonds and deliver same as provided in settlement agreement. We advised merger agreement

meets requirements of the Trust Indenture Act. Stop If you are advised to submit representations to SEC, we notify you that you will be held liable in damages for delays so occasioned unless you first submit to this company the matter that requires the consideration of the commission so that we can join with you in any application to them that may be necessary.

Pioche Mines Consolidated.

EXHIBIT DM-5

Fidelity Philadelphia Trust Co.
Philadelphia, Penna.

June 6, 1944

Pioche Mines Consolidated, Inc.
Pioche, Nevada

Attention: Mr. John Janney, President.

Gentlemen:

Since receiving your telegram of May 13, our general counsel, Morgan, Lewis & Bockius, have considered the question of our position under the Federal Trust Indenture Act and the Securities Act of 1933 in the event that we deliver the securities, and a copy of their opinion is enclosed. In this you will note their conclusions

(a) that under the Trust Indenture Act and the Securities Act we run a risk of liability if we deliver the Income Bonds, and

(b) certain recommendations made with respect to the treatment of outstanding debentures in the event the transaction contemplated by the Merger Agreement is consummated.

If the statement of facts as set forth in the opinion is not in accord with your understanding, will you please let us know promptly.

In our exchange of telegrams mention was made only of the Trust Indenture Act problem, and in view of the doubts expressed by counsel with regard to our position under the Securities Act of 1933, we have not as yet consulted the Securities and Exchange Commission, as we felt it advisable to first place in your hands a copy of their opinion. If, under the circumstances, you care to recall the securities or to join with us in consulting the Securities and Exchange Commission, please advise.

We have advised the Debenture Holders Committee, of our position in this matter, which is that of a ministerial agent, and for your information, we understand that consideration is being given by them as to consulting the Securities and Exchange Commission with a view to determining their own liabilities.

We are taking the liberty of sending a copy of this letter with a copy of the aforesaid opinion to your counsel, Dwight, Harris, Koegel & Caskey.

Very truly yours,

/s/ M. S. Altemose, Vice President.

EXHIBIT DM-6

Pioche Mines Consolidated, Inc.

June 16, 1944

Fidelity Philadelphia Trust Company,
Philadelphia, Pennsylvania

Gentlemen:

Re memo attached to your letter of June sixth, we herewith advise that this does not present a correct statement of the facts.

Debenture Holders Committee has available correct facts if they wish to reveal them to you. We advise you to secure their statement which you can submit to us for correction.

Very truly yours,

Pioche Mines Consolidated, Inc.,

/s/ By E. G. Woods, Secretary

EXHIBIT DM-7

Pioche, Nevada, July 3, 1944

Fidelity Philadelphia Trust Co.,
Philadelphia, Pennsylvania

Please telegraph if you will send us a revised statement which conforms to the fact in accordance with our request in our letter of June 16th.

Pioche Mines Consolidated, Inc.

/s/ E. G. Woods, Secretary

EXHIBIT DM-8

July 25, 1944

Fidelity Philadelphia Trust Co.,
Philadelphia, Pa.

Gentlemen:

Your letter of July 13th replying to our telegram of July 3rd, and our letter of June 16th has had the consideration of Directors meeting.

This reply is unsatisfactory in several particulars.

First, you run the risk of great injury to this company by implications and statements that are incorrect in any ex parte proceedings with the Securities and Exchange Commission relating to a matter that should be handled directly between this company and the S.E.C.

Second, you have refused our request to collaborate in a joint statement of agreed facts.

Third, you have presented through your attorney, Mr. Clark, to the S.E.C. the opinion of your counsel in spite of our protest.

Fourth, if the statements in the letter from your attorney are correct, the vote of the stockholders meeting has been based upon misrepresentation of the facts by the Debenture-holders Committee.

It seems to us that this is not the kind of cooperation you are committed to under the agreement aiming to settle the litigation you have initiated against this company because your action must inevitably result in two conflicting representations to the S.E.C.—one by you and the other by this company, with inevitable delay, confusion and serious loss to this company.

If the securities sent you cannot lawfully be de-

livered, your remedy was to return them to us. We question your right to involve the other parties to the settlement contract in this way.

Very truly yours,

Pioche Mines Consolidated,
By ..... Sec'y.

Copy of letter being sent to the Debenture Holders, bound by the Settlement Agreement:

Pursuant to the terms of the Settlement Agreement of July 8, 1942, under which this company is obligated to deliver to Fidelity Philadelphia Trust Company for your order, income bonds, and shares of stock to be exchanged for the old debenture bonds of this company, we have forwarded your new securities to them for delivery to you.

At the time of drafting the Merger Agreement the attorneys on both sides were of the opinion, expressed in writing, that the securities to be issued would be exempt from S.E.C. regulations. The merger definitely was ratified at stockholders' meetings on the basis that this is a statutory merger under Nevada laws requiring an exchange of securities within the company, and that registration of the securities was not required.

In view of the above and since neither the Settlement Agreement nor the Merger Agreement makes any provision requiring the company to qualify these securities under the Securities and Exchange regulations, accordingly the securities have not been registered under the Securities Act

and must be taken for investment and not for the purpose of resale to the public.

A written opinion from our attorneys has been forwarded to the Securities and Exchange Commission, printed copy of which is enclosed, together with copy of a letter from the counsel of the Securities and Exchange Commission, and a copy of the statement of facts as submitted by this company. Also we enclose a copy of the Settlement Agreement.

These letters are self explanatory. They leave the company in the position that the new securities constitute a private offering and not a public offering, and therefore, by virtue of section 4-(1) they are exempt from registration under the Securities Act and qualification of the indenture under the Trust Indenture Act. The securities were forwarded to the Trust Company on April 17th, 1944.

Respectfully,

Pioche Mines Consolidated, Inc.,
/s/ E. G. Woods, Secretary

EXHIBIT DM-9

Fidelity Philadelphia Trust Company
Philadelphia, Penna.

Mr. E. G. Woods, Secretary Aug. 5, 1944
Pioche Mines Consolidated, Inc.
Pioche, Nevada

Dear Sir:

In reply to your letter of July 25 we regret that you are under a misapprehension as to our position. As mentioned to you before, we are not rep-

resented by Mr. Clark in this matter and your remarks regarding the presentation to the Securities and Exchange Commission should be directed to him. We understand that Mr. Clark has discussed the matter with the staff of the Securities and Exchange Commission but that he did not present the opinion of our counsel, Messrs. Morgan, Lewis & Bockius.

We think we have evidenced our desire to cooperate and if you will recall in several instances asked whether you wanted the securities returned.

As heretofore stated, our position is that of a ministerial agent and as such we believe our position should be free of any liability under the various federal acts before the securities are delivered pursuant to your instructions. While we agree the responsibility is yours and that of the Bondholders Protective Committee, nevertheless, as evidence of our desire to cooperate and to expedite distribution of the securities, we shall be glad to join with you and the Bondholders Committee in discussing the matter with the Securities and Exchange Commission.

Very truly yours,

/s/ H. W. Latimer, Assistant Secretary

GL

EXHIBIT DM-10

September 9, 1944

Fidelity Philadelphia Trust Co.,
135 So. Broad St., Philadelphia, Pa.

Gentlemen:

Your letter of August 5th has been submitted to

adjourned Directors' meeting, and I am directed to write you as follows:

On April 17th, 1944, there was forwarded to you securities for delivery as required by the settlement agreement. Your claim that such delivery is in violation of the Trust Indenture Act of 1939, and Securities Act of 1933, has been brought to the attention of our attorneys Dwight, Harris, Koegel & Caskey, and to the legal department of the United States Securities & Exchange Commission.

For your information we herewith enclose printed copies of—

1. Letter of company to company's attorney.
2. Opinion letter of company's attorney.
3. Letter from the counsel for the U. S. Securities and Exchange Commission.

Also a copy of a letter being sent to the debenture holders who are bound by the Settlement Agreement.

With reference to your statement that you have not intervened in the matter with the S.E.C. and that Mr. Clark did not present the opinion of Morgan, Lewis & Bockius, we call your attention to the fact that the records of the U. S. District Court of Nevada show that you are represented in this litigation by Mr. Percy H. Clark and his law firm, who have interviewed the S.E.C. contrary to our request to you to the effect that a statement of facts should be approved by us before any interference by your attorneys should be had, in a matter that was prim-

arily one between this company and the Securities Commission.

Also we believe Mr. Clark will confirm that the opinion of Messrs. Morgan, Lewis & Bockius was in his possession, and that he made use of this letter in his conference with the Securities & Exchange Commission.

Very truly yours,

Pioche Mines Consolidated, Inc.,

.....

Secretary.

EXHIBIT DM-11

Morgan Lewis & Bockius
2107 Fidelity-Philadelphia Trust Building
Philadelphia, Pa.

September 19, 1944

Fidelity-Philadelphia Trust Company
135 South Broad Street
Philadelphia 9, Pennsylvania

In Re: Pioche Mines Consolidated, Inc.

Dear Sirs:

In our letter to you dated May 31, 1944, we reviewed at length the applicability of the Trust Indenture Act of 1939 to the situation presented by the issuance of 4% Income Debenture Bonds due December 1, 1973, of Pioche Mines Consolidated, Inc. which you have been requested to deliver to certain designated holders of Pioche Mines Consolidated, Inc. Debentures, and advised you that in

view of the uncertainties involved, you would run a risk of subjecting yourself to the penalty provisions of the Trust Indenture Act in delivering the Income Bonds unless the matter had first been cleared with the staff of the Securities and Exchange Commission.

In this connection you have submitted to us a letter dated September 9, 1944, from the Secretary of Pioche Mines Consolidated, Inc. with which he included a pamphlet setting forth copies of the following:

1. Letter of John Janney, President, Pioche Mines Consolidated, Inc., to Dwight, Harris, Koegel & Caskey, relating to this problem.

2. Opinion letter of Richard E. Dwight, Esq., dated July 11, 1944, in reply thereto.

3. Letter dated July 31, 1944, of Edward H. Cashion, Esq., Counsel, Corporation Finance Division of the Securities and Exchange Commission.

In Mr. Cashion's letter he reviews the facts as set forth in the two prior letters mentioned above, and concludes as follows:

"You of course appreciate the question whether a particular offering is public or private in nature is dependent upon all the facts and circumstances and one which, to a large extent, depends on intention, which in turn frequently depends on intangible factors best known to the parties to the transaction and their counsel. However, on the basis of the facts presented, I would not be inclined to recommend that the Commission take any action in

the event the company proceeds with the proposed transaction without registration under the Securities Act, or compliance with the indenture and qualification requirements of the Trust Indenture Act, upon advice of your counsel that the transaction is exempt therefore by the exemption specified in the preceding paragraph of this letter."

You have asked that we consider the situation in the light of Mr. Cashion's letter and advise you regarding the delivery of the Income Bonds pursuant to the instructions of Pioche Mines Consolidated, Inc.

In this connection you have received from Percy H. Clark, Esq., a copy of his letter dated September 15, 1944, to Mr. Robert McKeller of the staff of the Securities and Exchange Commission with which he enclosed a copy of the pamphlet referred to above and in which he requests an opportunity "to supplement and correct the facts presented" in the pamphlet.

On the record thus before us we find a presentation of the matter by the Company to counsel for the Securities and Exchange Commission and a reply from him, which, while not binding on the Commission, in our view so far as you are concerned has the effect of removing the risk which you as agent might otherwise have incurred in delivering the securities. However, Mr. Clark has apparently taken exception to certain of the facts upon which he believes Mr. Cashion's opinion was based, and

you quite properly feel that you cannot ignore Mr. Clark's position.

Under the circumstances we are of the opinion that you should inform both the Committee and the Company that you intend to deliver the Income Bonds as requested by the Company, if within a reasonable period of time, which in our opinion should not exceed ten days, you do not receive instructions to the contrary from the Securities and Exchange Commission.

If the Committee should raise objection to this course of procedure it will become necessary for you to consider the termination of your position as depositary for the Committee as Fidelity is not a party to the Settlement Agreement, and we find nothing in the various agreements authorizing you to make delivery of the Income Bonds over the objections of the Committee. If your position as depository is terminated, the Bonds should be returned to the Company.

Such controversy as has arisen, or may arise, is between the Committee and the Company, and your desire not to be involved should be appreciated by both parties.

We suggest that you advise the Securities and Exchange Commission of the position which you determine to take.

Very truly yours,

/s/ Morgan, Lewis & Bockius

EXHIBIT DM-12

Fidelity-Philadelphia Trust Company
Philadelphia, Pennsylvania

(9) September 22, 1944

Pioche Mines Consolidated, Inc.
Pioche, Nevada

Attention: E. G. Woods, Secretary

Dear Sirs:

We have your letter of September 9th with enclosures including the pamphlet containing a copy of the letter of Edward H. Cashion, Esquire, Counsel of the Corporation Finance Division of the Securities and Exchange Commission on the subject of the applicability of the Securities Act of 1933 and the Trust Indenture Act of 1939 to the issuance by your Company of the various securities contemplated by the Settlement Agreement dated July 8, 1942, between your Company and others. As you are aware, Mr. Clark has written to Mr. McKeller of the Staff of the Securities and Exchange Commission under date of September 15, 1944, requesting an opportunity "to supplement and correct the facts presented" to Mr. Cashion.

We have consulted our Counsel in this matter, Messrs. Morgan, Lewis & Bockius and enclose for your information a copy of their letter dated September 19, 1944, which we trust you will find self-explanatory.

In view of their advice, we will deliver the Income Bonds on Monday, October 2, 1944, if we do not receive instructions to the contrary from the Securities and Exchange Commission.

If this proposed procedure is objectionable to the committee, we will communicate with you immediately.

Very truly yours,

M. S. Altemose, Vice President.

MSA:DH

EXHIBIT DM-13

Fidelity-Philadelphia Trust Company
Philadelphia, Pennsylvania

(9) Air Mail

Pioche Mines Consolidated, Inc., Oct. 4, 1944
Pioche, Nevada

Attention: Mr. E. G. Woods, Secretary

Gentlemen:

With further reference to our letter of September 22, 1944, and particularly the last sentence and paragraph thereof, we enclose copy of letter which we have this day sent to Pioche Debenture Holders' Committee, which we believe is self-explanatory.

Very truly yours,

/s/ H. W. Latimer, Assistant Secretary

HWL:DH

EXHIBIT DM-14

Fidelity Philadelphia Trust Company

October 4, 1944

Pioche Debenture Holders' Committee
c/o Percy H. Clark, Esq.,
15th Floor, 1500 Walnut Street Building
Philadelphia 2, Pennsylvania

Dear Sirs:

This will acknowledge receipt of your letter received October 2, 1944, signed by Mr. Percy H. Clark and Mr. Albert P. Gerhard.

In your letter objection is raised to the distribution of the Income Bonds particularly, because, owing to Mr. Holden's illness, the Committee has not had an opportunity to take certain steps considered by it to be essential. You state that Mr. Holden has now returned to Philadelphia after a long absence.

This is to advise you that we will defer consideration of our position as depositary for a period of two weeks. At the end of two weeks we shall consider the matter further, which should allow ample opportunity for the Committee to consult with Mr. Holden and to take such steps as may be deemed appropriate.

We desire to have it clearly understood that we take no position with respect to the differences which may exist between various interested parties.

Very truly yours,

H. W. Latimer, Assistant Secretary

HWL:DH
CC: E. G. Woods, Secretary

EXHIBIT DM-15

Clark, Hebard & Spahr
1500 Walnut Street Bldg., Philadelphia 2

John Janney, President — October 6, 1944
Pioche Mines Consolidated, Inc.
Pioche, Nevada

Dear John:

I enclose for your information copy of a letter sent by the Debenture Holders Committee to Fidelity today, and am sending another copy to Messrs. Dwight, Harris, Koegel and Caskey. I have also written to Mr. Cashion that the Committee has taken this action and that this means I will not file a statement of corrections and supplemental information with him.

Very truly yours,

/s/ Percy H. Clark

PHC:mod Enc.

EXHIBIT DM-16

October 6, 1944

Fidelity-Philadelphia Trust Company,
135 South Broad Street, Philadelphia 9, Pa.

Attention: M. S. Altemose, Vice President.

Dear Mr. Altemose:

The undersigned Committee at a meeting attended by all of the members of the Committee have decided to accept the securities delivered to Fidelity by Pioche Mines Consolidated, Inc. on behalf of the

debenture holders who have deposited their debentures under the Debenture Holders Agreement dated as of February 1, 1939, subject, however, to the performance by Pioche Consolidated of the remaining obligations assumed by it by the Settlement and Merger Agreements.

You are therefore directed in accordance with the Debenture Holders Agreement to continue to hold the debentures, scrip and coupons deposited under that agreement as collateral for the reasonable reorganization expenses as defined in the Settlement Agreement. Direction for the surrender of these securities for cancellation will be given in time for the consummation of the reorganization.

The new securities received by you from Pioche Consolidated should not be issued to the debenture holders in exchange for your outstanding receipts until the reorganization is consummated in accordance with the terms of the agreements. The Committee directs that these new securities be held for the protection of the debenture holders as provided in Article G of the Debenture Holders Agreement until such time as the Committee can give directions for their distribution.

Very truly yours,

Pioche Debenture Holders Committee

By Percy H. Clark
Albert P. Gerhard

EXHIBIT DM-17

Fidelity Philadelphia Trust Co.

October 9, 1944

Pioche Debenture Holders' Committee
Percy H. Clark, Esq.,
1500 Walnut Street Building 15th Floor
Philadelphia 2, Pennsylvania

Dear Sirs:

This will acknowledge receipt of your letter of October 6, 1944, stating that the Committee has decided to accept the Securities delivered by Pioche Mines Consolidated, Inc. on behalf of depositing Debenture Holders, "subject, however, to the performance by Pioche Consolidated of the remaining obligations assumed by it by the Settlement and Merger Agreements."

We understand further from your letter that Mr. Janney has been advised of your position in this respect.

Fidelity-Philadelphia Trust Company, as you know, is not a party to the Settlement Agreement and can therefore assume no responsibility in determining when the remaining obligations to which you refer, have been performed. To clear the matter, therefore, and to put us in a position in which we can properly act pursuant to your letter of October 6th, this is to advise you that we will deliver the securities when we have received appropriate instructions from your Committee.

Inasmuch as your letter indicates that your Com-

mittee approves the form of the securities, it would seem that matters have progressed to a stage where a closing may be held, and in this connection we trust that your Committee and the Company may soon work out a plan directed toward this end.

We take this occasion to point out that at such closing all of the outstanding Debentures under the two Indentures dated January 2, 1929, and October 1, 1930, should be surrendered to us as Trustee thereunder for cancellation, and Pioche should take proper corporate action for the discharge of these Indentures. In this connection we would, of course, expect to receive payment of our Trustee's fees of which we have heretofore advised the Company.

We are sending a copy of this letter to the Pioche Company.

Very truly yours,

H. W. Latiner, Assistant Secretary

HWL:DH

CC: Mr. E. G. Woods, Secretary, Pioche Mines Consolidated, Inc.

EXHIBIT DM-18

PHC:mod-6 November 1, 1944

To Holders of Non-Negotiable Receipts of Fidelity-Philadelphia Trust Company for Debentures of Pioche Mines Consolidated, Inc. Deposited under Debenture Holders Agreement dated February 1, 1939:

Some progress has been made toward the con-

summation of the reorganization of Pioche Consolidated, as follows:

On December 27, 1943 the stockholders of Pioche Consolidated at an adjourned session of the stockholders meeting originally called for July 15, 1943 approved the Settlement and Merger Agreements and the latter was filed the same day in the office of the Secretary of State of the State of Nevada and the properties of the several companies thereby became merged under the laws of Nevada into Pioche Consolidated, the surviving company of the merger.

Late in April, 1944, Fidelity received from Pioche Consolidated the income bonds and stock of Pioche Consolidated in the names of the debenture holders who had deposited their bonds under the Debenture Holders Agreement, but in the opinion of Committee's counsel concurred in by counsel for other interested parties, there was doubt as to whether the requirements of the Securities Act and the Trust Indenture Act had been complied with.

Under date of July 31, 1944 Edward H. Cashion, counsel for the Corporation Finance Division of the S.E.C. at the request of Pioche Consolidated gave his opinion dated July 31, 1944 based on facts submitted to him by Pioche Consolidated that there had been no public offering of the securities to be issued and he would not be inclined to recommend the Commission take any action in the event the company proceeds with the proposed transactions without registration under the Securities Act or com-

pliance with the indenture and qualification requirements of the Trust Indenture Act.

Although the income bonds delivered to Fidelity by Pioche Consolidated are in rather unusual form, your committee in order to avoid further delay has decided to accept the bonds in the form offered, subject, however, to the performance by Pioche Consolidated of the further obligations assumed by it in the Settlement and Merger Agreements and has so advised Fidelity and Pioche Consolidated.

The Debenture Holders Committee was appointed by and derives its power from the Debenture Holders Agreement which among other things authorizes it

(a) To borrow from Fidelity not to exceed $17,500. for its expenses;

(b) to negotiate an arrangement in the nature of a reorganization or settlement;

(c) to determine the time for the performance of actions provided for in the agreement and all details relating to the carrying out of the agreement and any arrangement or settlement negotiated by Committee thereunder.

It has borrowed $9,000. and has incurred additional obligations for expenses to date amounting in total to something less than $13,000. as more particularly set forth in statement attached.

The debenture holders who signed the Debenture Holders Agreement (owning debenture to the amount of $455,500.) and deposited their debentures thereunder agreed by that agreement to repay the Fidelity on demand the amount loaned by Fidelity

to the Committee for the purpose of paying the expenses to be incurred in carrying out the trust agreements and the Debenture Holders Agreement together with interest and each of them further agreed to indemnify the Fidelity against any expense or liability incurred by it in carrying out the trust agreements and the Debenture Holders Agreement.

$687,300. of debentures of the two issues were certified by Fidelity as trustee as follows:

Those deposited under the Debenture Holders Agreement by those who signed the agreement	$455,500	
Those deposited by those who did not sign	142,100	
Those to be turned in by Pioche Mines Consolidated, Inc.	89,700	$687,300
Debentures to be cancelled without the issue of new securities		85,250
Leaving to be exchanged for Income Bonds and Stock under the plan		$602,050

There have been deposited with Fidelity under the Debenture Holders Agreement $597,600. in face value of debenture together with scrip and coupons appertaining thereto as security for the amounts loaned to the Committee and subject to this pledge for the protection of the debenture holders.

That agreement also provides all moneys advanced by holders of debentures and scrip shall be repaid in full before any distribution is made to holders of debentures and scrip or coupons of securities or funds recovered through any arrangement or settlement, and the holders of debentures

who make payments to Fidelity shall have a claim to the extent of the amounts paid by them respectively against the debentures, scrip and coupons deposited and any such funds or securities subject only to the claims of Fidelity. After Fidelity's claims are satisfied it will hold the securities in the capacity of a ministerial agent subject to the directions of your Committee.

The Settlement Agreement dated July 8, 1942 provides for the issue of 5% Preference notes payable in five years with a stock bonus which "shall be issued in face amount equal to all new moneys furnished to pay the reasonable reorganization expenses which must be paid in cash". The definition of reasonable reorganization expenses in this agreement includes among other things "the reasonable disbursements of the Debenture Holders Committee". Pioche Consolidated has stated among the facts submitted to Mr. Cashion as the basis for his opinion that these notes to the extent necessary will be taken by less than (10) ten of the company's stockholders so there seems to be no doubt the new moneys required to consummate the reorganization will be provided in a manner that will not involve a public offering.

In accordance with these two agreements your Committee has directed Fidelity to continue to hold the debentures, scrip and coupons deposited as collateral for the reasonable reorganization expenses and not to deliver the new securities received for the account of the debenture holders in exchange for the outstanding receipts until the reorganiza-

tion is consummated in accordance with the terms of the agreements. Direction for the surrender of the deposited securities for cancellation and the distribution of the new securities will be given by your Committee at the proper time.

The pending law suit is to be discontinued by all parties in time to consummate the reorganization. Your Committee even before the completion of the merger and several times since suggested to Pioche Consolidated a final closing settlement at which all parties could perform their several remaining obligations contemporaneously, but this suggestion has not been accepted up to date. Your Committee is waiting to learn what alternate method, if any, Pioche Consolidated has to suggest.

Pioche Debenture Holders Committee
under Debenture Holders Agreement
dated February 1, 1939
Percy H. Clark
Albert P. Gerhard
Robert F. Holden

EXHIBIT DM-19

Pioche Mines Consolidated
Pioche, Nevada

Robert F. Holden November 16, 1944
Albert P. Gerhard, Percy H. Clark, Chairman
Debenture Holders' Committee, Philadelphia, Pa.

Gentlemen:

Your circular letter dated November 1, 1944, ad-

dressed to the Philadelphia Debenture Holders of the Pioche Mines Consolidated, has been brought to the attention of the Board of Directors at adjourned meeting.

I am directed to write and request certain modifications of this letter or correction in the misleading nature of certain statements contained therein, in order that the security holders you have addressed may have a more accurate picture of the events concerning which you have addressed them.

In our opinion it is not a correct representation of the facts for you to say that the meeting called for July 15th did not approve the settlement until December 17th, and omit to say that the meeting voted the merger just as soon as they had received from your committee assurances to the effect that all debenture holders, not signers to the Settlement Agreement but whom you claimed to represent, (especially those who were provided for in clause 7) were obligated to the specific terms of said agreement "as written". (See our telegram of Dec. 1st and letter of July 29, 1943.)

In your circular letter you note the long interval of time between July 15th, date of meeting, and December 17th date of voting approval of Merger, but you withhold the information that would disclose the fact that during that time your Committee by evasive, conflicting and ambiguous replies to the simple request from the stockholders' meeting, delayed our action; and that this meeting was held in session, by this procedure of your committee, from July to December, 1943.

Under the circumstances therefore, we request that you bring to the attention of the same persons to which this circular letter has been shown the communications sent by the stockholders' meeting to your committee, as follows:

Letters of:

July 29, 1943 - Nov. 29, 1943, to Debenture Holders' Com.

Aug. 11, 1943 - Nov. 29, 1943, to Thatcher & Woodburn, Reno.

Aug. 13, 1943 - Nov. 30, 1943, to Debenture Holders' Comm.

Oct. 4, 1943 - Dec. 1, 1943, to Debenture Holders' Comm.

Oct. 8, 1943 - Dec. 2, 1943, Dec. 21, 1943, to Debenture Holders' Comm.

Also letter of Aug. 7, 1943 addressed to Debenture Holders' Committee, signed by the Boston Committee of Stockholders and Creditors, by R. K. Baker.

And also the following letters sent by the stockholders' meeting to the Fidelity Philadelphia Trust Company, copy to your committee:

Letter of Nov. 3, 1943 - Nov. 8, 1943 - Nov. 17, 1943.

When you withhold in your circular letter the information contained in the foregoing communications you are, in the opinion of the Board of Directors, misleading your associate security holders who are entitled to have this information, and to whom you owe this consideration. This for the obvious reason that they should have the opportunity to select other representative to conduct this important busi-

ness for them, or else ratify your acts with reasonable knowledge of what acts they are ratifying.

With reference to the sale of preference notes, it is perfectly clear that the debenture holders are entitled to receive their proper ownership in the new securities promptly, in exchange for present ownership in the old, in order that the old debentures may be cancelled and thus give clearance for the sale of the preference notes with the rights provided for in the settlement contract.

There is nothing in the Settlement Agreement which calls for any round table conference, or for a future meeting to arrange for a settlement. The settlement contract itself contains what was agreed to as a settlement, and as you well know it was signed by all the parties thereto, except your committee, with the definite understanding that no further negotians would be had with your committee, because our position was that the contract would not even be submitted to the other signers until you had become obligated by signing the same.

There is a specific provision in the contract that certain cash obligations are to be paid, but they are to be paid from the sale of preference notes, and this provision, ipso facto, makes the sale of preference notes, a condition precedent to the further steps in the settlement procedure, and of course you must know this and therefore your refusal to proceed promptly with the exchange of securities is a step tending to make the preference notes unsaleable, except at great disadvantage to the company, for which you and your associates should be held

responsible as well as for the other delays you have occasioned in violation of contract. The fact that the Trust Company has an agreement with your group of security holders, or that they have a lien on your securities under your arrangements with them, is no excuse whatever for your not expediting the sale of the preference notes. You can hold the new securities as collateral in place of the old, and thus protect both of your obligations—your contract with the Fidelity Trust Company, and your contract with the signers of the Settlement Agreement.

With reference to expenses;—We are of the opinion that your circular is defective in disregarding our letters of March 16th and April 26th, 1944, to your committee, in which this Board has asked for the expenses of your committee to be itemized in the same descriptive language as used in the settlement contract. You should inform the debenture holders that to date you have given no categorical specific answer to this question as we asked you to do. Your letter to the Boston Committee of Stockholders and Creditors relative to your expenses, on the strength of which they were induced to sign the settlement agreement, should also be shown to all debenture holders who are to be accurately informed in reference to the part of your circular letter which deals with this subject.

The Board of Directors feel they have a right to require of you a more accurate presentation to the debenture holders than your letter of November 1st gives them. Also it is the opinion of this Board

that you are again breaching the Settlement Agreement, the spirit and intent of which is expressed in paragraph 1, page 1:—"as speedily as possible to accomplish * * * so that the properties of these companies may at the earliest possible moment be turned into an enterprise profitable to the creditors and stockholders * * *".

We charge that during the past two years these properties could have been under operation during high metal prices and as a benefit to the war effort except for your deliberate acts of non-cooperation, delay and opposition.

By Order of the Board of Directors,

Pioche Mines Consolidated,

/s/ E. G. Woods, Secretary.

EXHIBIT DM-20

Air Mail December 5, 1944

Pioche Mines Consolidated, Inc.
John Janney, President
Pioche, Nevada

Gentlemen:

Your letter of November 16th received. The Debenture Holders Committee can not see that anything can be accomplished by discussion of matters which have nothing to do with the consummation of the reorganization. On the other hand we should discuss and decide what steps are necessary to con-

summate the reorganization in accordance with the terms of the contracts already in force.

Of course, the preference notes should not be issued by the company or accepted by the purchasers until all of the old obligations including debentures as well as other debts are cancelled and the reorganization is consummated in accordance with the plan. What applies to the issue of the preference notes applies with equal force to the issue of the income bonds and income notes. The issuer should not issue or the old security holders accept these securities except in connection with the consummation of the reorganization.

There are numerous things to be done which must be done contemporaneously. The purchasers of the preference notes will not pay in the purchase price until the old debentures and other debts are paid. The Committee can not deliver the deposited debentures or distribute the new securities until the debt for which they are pledged is paid. Fidelity can not cancel any of the debentures until they are all turned in for cancellation and it can not be expected to join with the other parties to discontinue the law suit until its fee is paid. In view of this situation the Committee has suggested there should be a final closing settlement at which all unperformed obligations shall be performed contemporaneously and the reorganization concluded.

Pioche Consolidated has rejected this suggestion. After all the obligation rests on it to carry through to completion the reorganization it has started. Please advise the Committee what steps Pioche Con-

solidated proposes to take to accomplish this end.

Our Committee is prepared to surrender the deposited bonds to the trustee for cancellation, request the plaintiffs in the law suit to join with defendants in the discontinuance of the law suit and cooperate with Pioche Consolidated for the consummation of the reorganization in any respect not inconsistent with what has been said above. It will, of course, distribute the new securities to those entitled thereto as soon as the reorganization is consummated.

Fidelity-Philadelphia Trust Company has requested that the debenture holders who signed the Debenture Holders Agreement repay the amounts loaned prior to January 1, 1945 in accordance with the provisions of the first paragraph of Article G of that agreement. Committee is about to request the debenture holders to pay the amounts due by them respectively prior to the said date. The Committee proposes to mail with the request a copy of Pioche Consolidated's letter to Committee dated November 16, 1944 and a copy of this letter as well as a statement of the facts leading up to the present situation. This will give the debenture holders the opportunity to select other representatives to conduct this important business for them or else to ratify the Committee's acts with reasonable knowledge of what acts they are ratifying as suggested by Pioche Consolidated.

Committee at the proper time expects a disclosure of all of the material facts relating to the reorganization as required by law in order that it may

intelligently discharge its obligations to the debenture holders whom it represents.

Pioche Debenture Holders Committee
By Percy H. Clark, Chairman

PHC:mod

EXHIBIT DM-21

December 13, 1944

Fidelity Philadelphia Trust Co.,
Philadelphia, Pa.

Gentlemen:

On September 22nd, 1944, after conferring with your attorneys Messrs. Morgan, Lewis & Bockius, you wrote as follows:

"In view of their advice, we will deliver the income bonds on Monday, October 2, 1944, if we do not receive instructions to the contrary from the Securities and Exchange Commission".

We also quote the following from your attorney's letter dated September 19, 1943:

"Under the circumstances we are of the opinion that you should inform both the Committee and the Company that you intend to deliver the Income Bonds as requested by the Company, if within a reasonable period of time, which in our opinion should not exceed ten days, you do not receive instructions to the contrary from the Securities and Exchange Commission".

You will kindly advise us if you have received instructions to the contrary from the Securities and Exchange Commission, and confirm whether you have exchanged the new income bonds for the old

debenture bonds? If you have not, will you please advise us what clause in the Settlement Agreement you were acting under in continuing to withhold delivery of these securities.

You will please recall that this company refused to vote approval of Settlement Agreement or Merger Agreement until we were given to understand that all debenture holders on your list had given you authority to make this exchange, as provided in Settlement Agreement, immediately upon our voting the merger and filing papers with the Secretary of State as provided for in Nevada Law. You therefore have this authority vested in you.

It is obvious that the sale of preference notes can be had under terms more advantageous to this company after the exchange of securities is actually consummated. This is clearly contemplated within the provisions of the settlement agreement, as well as in the assurances given to the stockholders' meeting based on which the vote was taken that approved the merger. Furthermore this vote was deferred until such assurances were given to the stockholders' meeting, which took from July to December, 1943. Since that time we have again been held up by the Debenture Holders' Committee and your refusal to conform to the terms of said agreement to our damage.

Meanwhile we have received no satisfactory reply to our letter of November 16, 1944, from the Debenture Holders' Committee, requesting them to correct certain statements in Circular Letter to their associated debenture holders, which letter we con-

sider misleading and requiring correction. We wish you to have in your records a copy of our communication which is enclosed.

We do not concur with your statement that you are not a party to the Settlement Agreement. We wish to repeat what we have said in former communications to you that the Settlement Agreement was proposed by your attorneys, while they were acting as such in the conduct of this case. You were plaintiff in the action, and Defendant in the counter action. Conspiracy was charged, and at the time your attorneys proposed a settlement you were on examination as a witness in the case, and in our view giving evidence relevant thereto.

The Settlement Agreement not only was proposed by your attorneys of record while acting in that capacity in the conduct of the case, but it was not submitted to the other signers until after the rough draft of proposed settlement, as initialed by your attorneys, was agreed to by them and in finished form signed by the Debenture Holders' Committee. It was explicitly not to be submitted to this company or to the other creditors until after the final drafting of the Settlement Agreement was duly executed by the Bondholders' agents.

Moreover the terms of the Merger Agreement provided for in said Settlement Agreement were drafted in form satisfactory to your attorneys of record in the case before the settlement was finally approved, or submitted to stockholders' meeting. We cannot concur that you are not a party of the Settlement Agreement.

Moreover it was definitely stated and understood that the other interests would never hold any further negotiations with the Debenture Holders' Committee, but that after said Committee were positively bound, a yes or no answer would be given them. The Settlement Agreement was drawn with this understanding, and by its terms corroborates this. We therefore point out that your cooperation with the Debenture Holders' in this regard is in violation of the settlement.

By Order of the Board of Directors,

Respectfully,

E. G. Woods, Secretary

EXHIBIT DM-22

January 3, 1945

Fidelity Philadelphia Trust Company
Philadelphia, Pa.

Gentlemen:

In order that you may be more thoroughly enlightened as to the representations that were made to the stockholders' meeting, based upon which they voted their ratification of the merger agreement, and in order that you may understand that the list of the debenture holders sent to the stockholders' meeting by you were represented to us as "definitely committed to exchange when vote of stockholders ratifies merger agreement, and same is filed with the Secretary of State, which under Nevada statute completes the merger", we are sending you

herewith copy of our telegram of August 6th bearing on this question, addressed by the Secretary of this company to the debenture holders' committee, and a copy of the following telegrams which relate to the definite commitment by the debenture holders' committee that all on the list you sent us were so committed, namely:

August 7, August 10, August 13, November 29, November 30, November 30, December 1, December 1, December 2, and December 3.

You will see from these telegrams that in acting under the directions of the debenture holders' committee you were acting at variance with the assurances and representations made to this company, which representations were made with the intention of inducing them to vote their approval of the merger agreement, whereby certain properties were conveyed to this corporation, and you are acting in cooperation with the debenture holders' committee in violence to these assurances given to the company, and based upon which representations valuable properties were conveyed to the company by parties who relied upon the assurances given.

In the foregoing circumstances this company demands that you give to your attorneys authority and direction to appear in court in your behalf, and agree to the dismissal of this suit, sending us a copy of such authority, and that you immediately proceed to exchange the ownership of the old securities for the ownership in the new securities, so that the title to the new securities may pass subject to such claims as you may have upon them, to the deben-

ture holders on your list in exchange for the old securities which you are now holding subject to the provisions of the settlement agreement, and that the preference notes may be sold in conformity to the assurances given to the stockholders' meeting.

By Order of the Board of Directors,

E. G. Wood, Secretary

EXHIBIT DM-23

February 14, 1945

Fidelity Philadelphia Trust Company
Philadelphia, Pennsylvania
Attention: Mr. Marshall S. Morgan, President

Gentlemen:

Our letter to you dated December 13, 1944 signed by E. G. Woods, Secretary, written on the order of the Board of Directors of this Company is still without reply.

The meeting of the Board of Directors which is now in session being held in New York, attended by the representatives upon the Board of the Boston interests, the Virginia interests, the Philadelphia interests and represented by the Western interests by the President of the Company, is giving consideration to our letter to you of December 13, also to our letter to the Debenture Holders' Committee dated December 30, copy of which was heretofore sent you, but for the purpose of the record an additional copy is enclosed herewith duly signed by the Secretary of the Company.

We next refer to the file recently sent you enclosing copies of the telegram of August 6 from the stockholders meeting signed by E. G. Woods, Secretary, which asked "what bonds are and what are not definitely committed to exchange when vote of stockholders ratifies merger agreement and same is filed with Secretary of State which under the Nevada statute completes the merger". This file also contains copies of August 7, August 10, August 13, November 29, November 30, November 30, December 1, December 1, December 2, December 2, December 3.

The Board of Directors now wishes to advise you that the vote of the stockholders ratifying the Settlement Agreement and voting the merger was passed on the basis of assurances from the Debenture Holders named in the list sent this Company by Fidelity Philadelphia Trust Company, that their bonds were obligated to be exchanged for the new bonds and stock, to be issued under the Settlement Agreement immediately upon the voting of the merger and filing of the papers with the Secretary of State,

1. With reference to the stockholders voting approval of the Settlement Agreement,

2. With reference to the creditors who held a prior claim on the assets of the Pioche Mines Company and who relinquished their claim which they did, under Nevada law, when the merger papers were filed with the Secretary of State.

Since it is true that the vote of the stockholders of the Company and also the vote of the holders of

preferred claims against the assets of the Pioche Mines Company was obtained by the representations made by the Debenture Holders' Committee, and since the Debenture Holders' Committee was informed at the time that the vote so recorded was based upon such representations, we as a Board of Directors deny your right to conduct the business of these bond holders based upon any order to you from the Debenture Holders' Committee, which conflicts with these representations, and we are of the opinion that any refusal to exchange old securities for the new on the part of either the Fidelity Philadelphia Trust Company or the Debenture Holders made in the circumstances above referred to is an act which we believe to be a part of a conspiracy to delay or defeat the lawful right of this Company to proceed with the remaining steps which need to be taken and which are provided for in the Settlement Agreement.

Accordingly we ask that you advise us within ten days of receipt of this letter that the exchange of ownership of the new securities for the old has been made or that such exchange has been refused to be made. As soon as you notify us that the exchange of ownership has been made we will then be in a position to report to the remaining creditors and stockholders that the opposition to the consummation of these agreements by Fidelity Philadelphia Trust Company, acting together with the Philadelphia Debenture Holders, has been terminated and that we are ready to proceed with the remaining steps provided for in the Settlement

Agreement. Both sets of securities can be retained by you pending any necessary settlement between you and the Debenture Holders whom you represent.

Very truly yours,

/s/ Pioche Mines Consolidated Inc.
August L. Putnam, Boston Director
J. Harry Crafton, Virginia Director
Wm. Innes Forbes, Philadelphia Director
John Janney, President.

Confirmed
Boston Committee of Stockholders and Creditors
/s/ Richard K. Baker
Acting under irrevocable power of attorney.

EXHIBIT DM-24

Fidelity-Philadelphia Trust Company
135 South Broad Street, Philadelphia 9

February 24, 1945

Mr. Augustus Putnam, Boston Director
Mr. J. Harry Crafton, Virginia Director
Col. Wm. Innes Forbes, Philadelphia Director
Mr. John Janney, President
Pioche Mines Consolidated, Inc., Pioche, Nevada

Gentlemen:

Your letter of February 14, 1945 was delivered to me on February 16, 1945, by Col. Wm. Innes Forbes. I have delayed my answer until this date only because I wished to discuss the subject thereof

with Messrs. Morgan, Lewis & Bockius who are counsel for Fidelity-Philadelphia Trust Company with respect thereto.

The letters of earlier dates to which you make reference were received in due course and referred to Messrs. Morgan, Lewis & Bockius. About the middle of January, Mr. Ringe of that firm advised us that he had been in communication with Messrs. Dwight, Harris, Koegel & Caskey, counsel for Pioche Mines Consolidated, with regard to this entire matter and that he expected to confer with Mr. Dwight and others during the week of January 22nd and before he left the City, which he contemplated doing on or about January 28th. On January 27th Mr. Ringe advised us that while both he and Mr. Dwight had made every effort to hold the conference which had been planned, it had not been possible to do so and that because of his absence from the City for about two weeks, it had been agreed that the conference should be deferred until his return during the week of February 12th.

After Mr. Ringe's return, he undertook to communicate with Mr. Dwight for the purpose of arranging the planned conference but before he was able to communicate with him your letter was delivered to me. He was unable to reach Mr. Dwight until Wednesday, February 21st, after your letter had been referred to him. Mr. Ringe advises us that he and Mr. Dwight have agreed to confer early in the coming week when it is expected that the arrangements for the exchange may be completed.

Please understand that our counsel, Messrs. Mor-

gan, Lewis & Rochius, have been instructed to make every effort to promptly clear the several matters discussed in your letter. It is my personal hope and expectation that this will be done.

The original of this letter is being sent to Mr. Janney, the President of the Company, and copies are being sent to the other gentlemen addressed.

Very truly yours,

/s/ M. S. Morgan, President

February 24, 1945.

EXHIBIT DM-25

Morgan Lewis & Bochius
2107 Fidelity-Philadelphia Trust Building
Philadelphia, Pa.

February 27, 1945

Richard E. Dwight, Esq.,
Dwight, Harris, Koegel & Caskey,
100 Broadway, New York 5, N. Y.

Re: Pioche Mines, Consolidated

Dear Mr. Dwight:

This letter is addressed to you following our several conversations in the course of which we briefly discussed the differences which have arisen between Pioche Mines, Consolidated (acting through its president and directors) and the Debenture Holders Committee.

This firm is counsel for Fidelity-Philadelphia Trust Company (sometimes herein referred as to "Fidelity") and it is for the firm in that capacity that I write this letter.

May I preliminarily very briefly state the situation as I understand it to be, after my study and examination of the information which has been submitted to me, and then in reply to the letter of your clients addressed to Fidelity, to the attention of Mr. Marshall S. Morgan, the president, on February 14, 1945, take up Fidelity's position?

Fidelity is trustee under an agreement dated January 2, 1929, providing for the issue of "Five Year 7% Convertible Debentures" by Pioche Mines, Consolidated, to mature on January 1, 1934, under which debentures are now outstanding in the princapital amount of $476,300. Fidelity is also trustee under an agreement dated as of October 1, 1930, providing for the issue of "Convertible 7% Sinking Fund Gold Debentures" by Pioche Mines, Consolidated, to mature October 1, 1937, under which debentures are now outstanding in the principal amount of $211,000. Under the two agreements Fidelity is trustee for two classes of outstanding debentures having a gross principal amount of $687,-300.

Following the default of Pioche Mines to the holders of the debentures, Fidelity also became depositary under an agreement dated as of February 1, 1939, for debentures of both classes. Debentures in the principal amount of $597,600. have been deposited with Fidelity under this depositary agreement; for these debentures there are certificates of deposit outstanding which must ultimately be retired.

As of July 8, 1942, after the institution of a suit

by Fidelity (as trustee under the trust agreements and pursuant to the direction of a majority of the debenture holders and of the Committee under the Depositary Agreement) and after extended negotiations, a settlement agreement was entered into between the Company, the Debenture Holders Committee and a Creditors Committee, under which a reorganization and merger was agreed upon.

From the foregoing very brief statement it is apparent that Fidelity has obligations under both the two trust agreements (of January 2, 1929 and October 1, 1930) and the depositary agreement of February 1, 1939. While under all three agreements its primary obligation is to the debenture holders, it has obligations to the Company and, in addition, under the provisions of the depositary agreement, has obligations to the committee representing the depositing debenture holders.

Those representing the Company and the Committee have now expressed different views with respect to the course of procedure which they respectively believe Fidelity should follow under the settlement agreement, with the result that Fidelity, occupying the position of trustee under two agreements and depositary under another, finds it is in a position where it is difficult to please both those representing the Company and those representing the Committee, to both of whom it has obligations under the several agreements.

Fidelity is most anxious to settle all of the existing differences as quickly as possible, and has instructed this firm to make every effort to promptly

clear the several matters so far as it is possible to do so. It is in that endeavor that I address this letter to you as counsel for the Company and those acting for it. It is my hope that we will be able to work out a plan under which the necessary steps may be taken and to which the Committee will agree, although I desire to make it quite clear that we do not represent the Committee and do not speak for either it or its members.

In the recent letter received by Fidelity from your clients, under date of February 14, 1945 (written during the course of my discussions with you) the several previous letters addressed by your clients to Fidelity (which were then also the subject of our discussions) are reviewed, together with certain other correspondence, following which the statement is made that the Settlement Agreement was entered into upon assurances received from Fidelity that the debenture holders who were represented by it were obligated to make the exchange provided for in the Settlement Agreement. This statement is followed by this language:

"* * * We as a Board of Directors deny your right to conduct the business of these bond holders based upon any orders to you from the Debenture Holders' Committee, which conflicts with these representations, and we are of the opinion that any refusal to exchange old securities for the new on the part of either the Fidelity-Philadelphia Trust Company or the Debenture Holders made in the circumstances above referred to is an act which we believe to be a part of a conspiracy to delay or defeat the lawful right of this Company to proceed with the

remaining steps which need to be taken and which are provided for in the Settlement Agreement."

Please understand that Fidelity is not "Conducting the business of the bond holders" upon orders from anyone which are in conflict with any previous representations, and that it does not refuse to exchange the old securities for the new. On the contrary and in direct reply to the question put by your clients, Fidelity is prepared to make the exchange provided for in the agreements and which is requested by your clients just as soon as the essential steps preliminary thereto have been taken.

Further, and in reply to the last paragraph of the letter of your clients, dated February 14, 1945, please understand that Fidelity has never opposed and does not now oppose the consummation of the settlement and merger agreements.

In our opinion, the essential steps which must be taken preliminary to the exchange are:

1. The receipt by Fidelity of all outstanding debentures totaling $687,300, in principal amount as follows:

$602,050 for exchange of new securities and thereafter cancellation

$ 85,250 for cancellation without the issuance and exchange of new securities.

While Fidelity now holds as depositary $597,600 in principal amount of these debentures, there are still outstanding $89,700, all of which I am advised are controlled by your clients.

Do you not agree that the delivery to Fidelity of

all outstanding debentures is an essential preliminary step and, if so, will you be so kind as to advise me as to how your clients will arrange for the delivery thereof to Fidelity.

2. The receipt by Fidelity of new income bonds in the amount of $602,050 to be distributed in exchange for outstanding debentures.

I am advised that Fidelity has received income bonds in the principal amount of $539,800 which I have tentatively concluded to be $62,250 short of the amount required. I am advised that Mr. Janney in a letter dated April 17, 1944, addressed to Fidelity, stated that certain debentures were not being sent. While, as I have previously indicated, I believe these debentures should be forwarded, the amounts therein listed (E. W. Clark & Co. $40,000., Lee $12,-500., Brown $2250. and Brook $2500.) amounting to $57,250, would appear to leave to be received $5,000 in order to make up the $602,050., or $550. to make up $597,600. the principal amount of the debentures now represented by Fidelity.

Do you not agree with my conclusion that the full amount of income bonds to be distributed should be in the possession of Fidelity before the exchange is made?

3. The receipt by Fidelity of 55% of 47½% of the common stock of the new company for the account of the debenture holders which it represents.

The agreements call for the delivery of 1,112,287 shares. I am advised that Fidelity has received only 1,005,766. My tentative conclusion is that the bal-

ance of these shares should be delivered before the exchange is effected.

4. The receipt by Fidelity of an amount sufficient to cover its trustee's fee and expenses.

I have not been advised as to how these payments are to be made and will be glad to have you enlighten me.

5. The receipt by Fidelity of an appropriate commitment on the part of your clients, and particularly those who signed the letter of February 14, 1945, addressed to Mr. Marshall S. Morgan, that in consideration of the exchange the remaining steps required of them for the consummation of the settlement and merger agreements will be taken. Among these steps is the fulfillment of the obligations to the Debenture Holders Committee.

It would seem that the caring for the details necessary to complete all of these steps may be amicably worked out between us and I am prepared to go into this with you.

There are, of course, additional steps which Fidelity must take before the settlement agreement is consummated. Fidelity is prepared to take these steps as the program for the settlement advances and it becomes appropriate for it to do so.

As I have stated before, I shall be pleased to confer with you about any phase of this matter. I will, of course, welcome an opportunity to discuss with you any suggestion which you may have with respect to Fidelity's position as herein stated, and I will gladly go to New York for that purpose.

Will you be so kind as to let me hear from you.
Very truly yours,

R. /s/ Thomas B. K. Ringe

EXHIBIT DM-26

New York City, N. Y., March 8, 1945

Fidelity Philadelphia Trust Co.
Philadelphia, Pa.

Attention: Mr. Marshall S. Morgan, President.

Gentlemen:

We are naturally disappointed in receiving no answer to the letter handed to you by Col. Forbes, which gave you the attitude of the board of directors of this company, in that you have not by now seen to it that someone in your company has given the reply to the questions asked you in our letter of December 13, 1944, which brings into very definite focus whether or not the Securities Exchange Commission has modified their expression with reference to the legality of the issue of securities which were sent you almost a year ago.

You delay distribution upon the excuse that this issue might be in violation of the Trust Indenture Act. In your letter of September 22, 1944, you definitely agreed that you would deliver the income bonds on Monday, October 2, 1944, if you did not receive instructions to the contrary from the Securities Exchange Commission.

With reference to your letter of February 24, we do not see what bearing the absence of Mr. Ringe

for two weeks or failure of Mr. Ringe to have conferences with Mr. Dwight or others could possibly have upon your giving us a courteous answer to our questions and I am advised by the directors to enclose a copy of resolutions enacted at yesterday's meeting and to inform you that we are still considering that you are in violation of the Settlement Agreement and that you have not complied with our request in our letter of February 14, that you give us an answer within ten days from that date, which leaves us only to believe that you in cooperation with the Debenture Holders' Committee and other debenture holders are determined to delay the necessary proceedings provided to be taken in the Settlement Agreement of July 8, 1942, to the great damage of this company and its security holders.

By order of the board of directors.

/s/ Augustus L. Putnam
Secretary of the Meeting

EXHIBIT DM-27

Fidelity-Philadelphia Trust Company

Airmail March 12, 1945

Mr. Augustus L. Putnam
Pioche Mines Consolidated, Pioche, Nevada

Dear Mr. Putnam:

This is to acknowledge the receipt of your letter of March 8, 1945, mailed from New York City and addressed for attention of Mr. Marshall S. Morgan,

who has asked me to reply. I regret that I do not know where in New York you may be reached, for had I such information this letter would undoubtedly be received more quickly than through being forwarded from Nevada.

While you state that you are disappointed "in receiving no answer to the letter" handed to Mr. Morgan by Colonel Forbes, you, of course recognize that Mr. Morgan did make reply to your letter of February 14th under date of February 24th, for you mention that reply in the third paragraph of your letter. Mr. Ringe advised us that he had talked with Mr. Dwight on the telephone and that Mr. Dwight stated that he, Mr. Dwight, was counsel for Pioche Mines Consolidated. We instructed Mr. Ringe and his firm to make every effort to promptly clear the matters discussed in your letter of February 14th and I am advised that steps to that end are now under way.

Mr. Ringe advises me today that he has personally been in touch with Mr. Dwight and with Mr. Tuttle of the firm of Dwight, Harris, Koegel & Caskey, during the course of which he sets forth the position of this Company which has heretofore been informally stated by us to the representatives of Pioche Mines Consolidated. I am somewhat surprised that the position of the Company as stated by Mr. Ringe has not been made known to you and to your associates.

In your letter and in the copy of the resolutions which accompanied it there is the suggestion that

this Company has been intentionally and without reason attempting to delay the consummation of the settlement agreement and I think it appropriate to state very clearly that this suggestion is without foundation.

This Company is prepared to make the exchange provided for in the agreements, just as soon as the essential steps preliminary thereto have been taken. Our counsel have made known the nature of these steps and the questions remaining to be cleared. I see no reason why the details which remain cannot be promptly cared for and the exchange effected. However, before this may be done, it will be necessary for someone representing the Company to give consideration thereto. I have no doubt whatever but that your counsel are now doing just that.

May I suggest that you consult Messrs. Dwight, Harris, Koegel & Caskey, and if there is any further step that I may take in order to expedite this matter, I shall be glad to have you advise me.

Very truly yours,

M. S. Altemose, Vice President

MSA:DH

CC: Mr. Augustus L. Putnam, 79 Beacon Street, Boston, Mass.

EXHIBIT DM-28

Dwight, Harris, Koegel & Caskey
100 Broadway, New York 5, N. Y.

Thomas B. K. Ringe, Esq. March 16, 1945

Messrs. Morgan, Lewis & Bockius
2107 Fidelity Philadelphia Trust Bldg.
Philadelphia, Pa.

Re: Pioche Mines, Consolidated

Dear Mr. Ringe:

Your letter of the 27th ultimo was duly received.

As I advised you over the telephone, the Board of Directors of Pioche Mines, Consolidated, have advised me that they do not consider that any more conferences between Pioche Mines, Consolidated, and its counsel and Fidelity Philadelphia Trust Company and its counsel are necessary or proper pending completion of the Settlement Agreement, to which I agree.

After further advisement, there are two things the Consolidated Company ask the Trust Company to do immediately, both of which are clearly required by the Settlement Agreement and no preliminary steps are required.

First: The Trust Company should advise Pioche Mines, Consolidated, of its acceptance of the new debentures of the reorganized company and accompanying stock in payment of and to the exchange for the debentures of the old company, as indicated in the letter of transmittal from Pioche.

Pioche does not ask that the old debentures be cancelled at the present time and certainly does not ask that the trust indentures of which the Trust Company is trustee should be cancelled.

The foregoing is necessary in order to complete the settlement agreed upon.

Second: The Trust Company should immediately instruct its attorneys in Nevada to consent to and arrange for the discontinuance, without costs, of the existing litigation.

The present suit while pending is a cloud on the title of the new Consolidated Company, and it is an impediment to negotiating a lease of the property and to obtaining subscribers to the prior preference notes, which under the Settlement Agreement the management have agreed to use their best efforts to do.

We trust Fidelity Philadelphia Trust Company will see not only the obvious justice but the necessity for complying with the two foregoing requirements and not delay the completion of the reorganization any further.

As I advised Mr. Clark in my letter to him of January 16, 1945, in my opinion both the Fidelity Philadelphia Trust Company and the Debenture Holders' Committee are in default under the Settlement Agreement.

Very truly yours,

Richard E. Dwight

EXHIBIT DM-29

Fidelity Philadelphia Trust Company
Philadelphia 9, Pennsylvania

Air Mail April 3, 1945

Pioche Mines Consolidated
Pioche, Nevada

Gentlemen:

We refer to our correspondence relating to your requests that we accept the new debentures of the reorganized company and the accompanying stock to be exchanged for the debentures of the old company, and your further request that we issue instructions to our attorneys in Nevada to discontinue the existing litigation.

Our counsel, Messrs. Morgan, Lewis & Bockius, have advised us that before granting these requests, certain essential steps preliminary thereto should first be taken. These steps have been outlined in a letter addressed by Thomas B. K. Ringe, Esq. of Morgan, Lewis & Bockius, to Richard E. Dwight, Esq., counsel for you, under date of February 27, 1945, a copy of which we enclose.

Mr. Dwight has written Mr. Ringe under date of March 16, 1945, and we have given further consideration to the entire matter.

Because of our desire to cooperate in the completion of the settlement agreement, we have decided to discontinue the suit and have accepted the new securities to be exchanged for the debentures of the

old company. It is understood, of course, that this acceptance is upon the express understanding that the remaining steps to be taken by Pioche Mines Consolidated will be taken with reasonable promptness. The old debentures and the trust indentures under which they were issued will not now be cancelled and the new securities will be held subject to the rights of Fidelity.

Further, we are today instructing our attorneys in Nevada to take such steps as may be necessary to join in with other counsel of record for the discontinuance of the existing litigation, including both the original suit and all counter-claims, in such manner as will dissolve all attachments and satisfy all liability under outstanding bonds of indemnity.

Please understand that Fidelity does not consider itself in default under the Settlement Agreement and believes that it has a clear right to continue to refuse to take the steps requested until it has in its possession all of the old debentures, income bonds and common stock of the new company as described in Mr. Ringe's letter. However, it is taking the steps herein outlined upon the assumption that these steps (which it believes should have been taken prior to this time) will be taken within the immediate future and in order that its good faith will be no longer questioned. [Printer's Note: Foregoing paragraph typed in capital letters.]

Will it not be possible for someone representing Pioche Mines Consolidated to confer either with us or with our counsel in order that the important problems which remain may be properly cleared?

We have requested Mr. Ringe to take up with Mr. Dwight the several matters discussed in Mr. Janney's letter to us of April 17, 1944.

Very truly yours,

/s/ M. S. Altemose, Vice President

MSA:DH

EXHIBIT DM-30

April 11, 1945

Fidelity Philadelphia Trust Company,
Philadelphia, Penna.

Attn: Marshall S. Morgan, Pres.

Gentlemen:

Your letter of April 3rd addressed to this company has had our consideration. A special meeting of our full Board of Directors is called for April 24th to give further consideration to this letter.

Meantime, I am directed to call to your attention that our position was clearly stated to you as result of Director's meeting held in March in New York. Especially that we wish obstructions raised by you to the sale of preference notes, authorized under the settlement agreement, to be ended.

As you should know from letters you have received, we cannot confirm alterations, changes, amendments to nor approve violations of the terms of the settlement agreement without the written consent of all parties thereto, which you of course realize is impossible to obtain.

This company has issued and sent you for delivery all securities called for by the settlement

agreement, and in accord with your list sent us, except such as are in question in the Nevada court, and such as you have no authority to ask for, according to our records.

The conditions set forth in the letter you enclosed from your attorneys, dated February 27th, are not in accord with the settlement agreement as you of course know, and the errors contained in this letter should be corrected unless you wish your position to be based upon erroneous assumptions.

You say certain essential steps, preliminary to granting our requests (that you should remove the cloud you have caused as an impediment to the sale of preference notes), have been outlined in this letter of your attorneys. You further state that your granting our request is conditioned and requires that things should be done which the settlement agreement clearly does not provide shall be done, and that steps outlined in the letter of your attorneys, but which are not called for in the settlement, shall be taken by this company with reasonable promptness.

It is difficult to see how our full meeting of Directors can look upon such conditions and requirements as intended to facilitate the sale of preference notes, which is the next step in consummation of the settlement of the litigation as provided in settlement contract.

It might appear on the contrary that the complicated method you have chosen to set up these requirements and conditions in your letter, and the inclusion of the misconstruction and misconceptions

in the letter you enclose, and which you include by reference in paragraph two of your letter, rather tends to show that you are trying to increase rather than dispel the difficulties to the sale of the preference notes.

It is hard to see how any prospective investor could ever tell from your letter what your future actions or requirements will be, or when, or if ever the conditions you will make will have been concluded, nor whether the signed settlement agreement is not being replaced by another and different arrangement.

Respectfully,

Pioche Mines Consolidated, Inc.,
/s/ E. G. Woods, Secretary

EXHIBIT DM-31

Mr. Richard E. Dwight April 11, 1945
100 Broadway, New York, N. Y.

Dear Mr. Dwight:—

We have a letter from the Fidelity Philadelphia Trust Company, under date of April 8th, a copy of which I enclose.

You will note that the Fidelity asserts the right to continue to refuse to take the steps we requested until all of the old debentures, income bonds and common stock of the new company, described in Mr. Ringe's letter to you of February 27th, are in their possession. Also you will note that their will-

ingness to accept the delivery of the securities sent them is upon the condition, or with the understanding, that we will take immediately the steps outlined by Mr. Ringe.

We of course cannot do this, nor can we find any provisions in the settlement agreement for our delivery to the Fidelity or any securities other than the ones we have already delivered to them.

Mr. Ringe's letter of February 27th to you is a hodge-podge of inaccuracies, misunderstandings, misconceptions, and erroneous statements some of which we went into with you in our meeting in New York, and I am afraid the Board of Directors will consider when a full meeting is had that instead of going forward we have gone backward as a result of our recent communications with the Trust Company, particularly as it involves Mr. Ringe and the firm of Morgan, Lewis and Bockius. These gentlemen evidently have received so much misinformation that they would never be able to understand or interpret the language of the settlement agreement, and we would prefer that you have no further conferences with them, but stand on your last letter as the final word.

With best wishes and kindest regards,

Sincerely yours,

/s/ John Janney

jj/gq. enc.

EXHIBIT DM-32

Fidelity-Philadelphia Trust Company
Philadelphia (9), Pennsylvania

Air Mail April 19, 1945

Mr. E. G. Woods, Secretary
Pioche Mines Consolidated
Pioche, Nevada

Dear Mr. Woods:

This is in reply to your letter of April 11, 1945, addressed to Mr. Marshall S. Morgan, President of this Company, the tenor of which we do not understand.

In our letter of April 3, 1945, we endeavored to clearly and briefly state the reasons why we had not theretofore considered it appropriate to accept the new securities in exchange for the old and discontinue the pending litigation. In the course of that statement, we referred to the letter addressed by Mr. Ringe of the firm of Morgan, Lewis & Bockius to Mr. Dwight under date of February 27, 1945, a copy of which we enclosed. We then stated that because of our desire to cooperate, we would not adhere to the position which we had taken (and which we believed had been correct) but would accept these securities and discontinue the litigation. We thereupon did accept the securities and immediately instructed counsel to take the necessary steps for the discontinuance of the litigation, all as stated in our letter.

We decided to make the change in our position

because we had reached the conclusion that the "deadlock" which had developed should be broken and we undertook to do so. We cannot understand your dissatisfaction with these steps as we anticipated that they would have your complete approval.

The undisposed of questions relate to the differences between the securities requested and those received, and the completion of the settlement and merger agreements, the consummation of which we desire to expedite. We are of the opinion that if it were possible for our representatives to discuss these matters, which we considered details, they would be promptly and satisfactorily disposed of.

We desire to state with clarity and with emphasis that we are imposing no conditions beyond the contemplation of the agreements between the parties, that we do not suggest any amendments to any of the agreements, that we have not (and do not now) raised any obstructions to the sale of your notes, and that we have earnestly endeavored to cooperate with you.

Further, we believe it pertinent to add that we have consulted our general counsel, Messrs. Morgan, Lewis & Bockius, with respect to this matter because of your very apparent lack of confidence in Mr. Clark. Messrs. Morgan, Lewis & Bockius, in accordance with our request, have been endeavoring to be helpful in disposing of such differences as may exist.

We believe that all of these matters may be satisfactorily completed with reasonable promptness if it were possible for us to approach and discuss them with you with less acrimony and a more cooperative

spirit. It is our hope that this may be done and we stand ready to receive your suggestions with respect thereto.

This letter is being sent by Air Mail and with the thought that you may have left Pioche before it reaches you, a copy is being mailed to Mr. Dwight at New York in order that it may be available for your information at the meeting to be held there on April 24th.

Very truly yours,

/s/ M. S. Altemoso

MSA:DH

EXHIBIT DM-33

April 25, 1945

Fidelity Philadelphia Trust Company,
Philadelphia, Pa.
Attn. Mr. Marshall S. Morgan, President.

Gentlemen:—

We have given consideration to your letter of April 19th. If this letter is intended to remove the cloud on the sale of the preference notes by your acceptance of the securities sent you for exchange under the settlement agreement, it is necessary in the nature of the case that your acceptance should be unconditional, or at least that the conditions should be clearly stated, should be specific and should be within the provisions of the settlement agreement as a condition precedent under the agreement to the exchange of the securities.

In order to make sure that there is no misunderstanding on this point we have telegraphed you as follows:—

"Fidelity Philadelphia Trust Company
Philadelphia, Pa.

Your letter of April 19th. Do you accept securities unconditionally? Please answer yes or no.

/s/ Pioche Mines Consolidated."

Respectfully submitted,

Pioche Mines Consolidated, Inc.,

By order of Board of Directors,
/s/ E. G. Woods, Secretary.

EXHIBIT DM-34

[Telegram]

6 s co 20

Philadelphia Penn 102 pm Apr 26 1945
Pioche Mines Consolidated,
Pioche, Nevada.

Re your telegram April 25 securities have been accepted. Only condition is the performance of obligations imposed by existing agreements.

Fidelity Phila Trust Co

1240 pm

EXHIBIT DM-35

Fidelity-Philadelphia Trust Company
Philadelphia (9), Pennsylvania

AIRMAIL May 2, 1945

Mr. E. G. Woods, Secretary
Pioche Mines Consolidated
Pioche, Nevada

Dear Mr. Woods:

This is in reply to your letter of April 25, 1945, addressed to this company to the attention of Mr. Marshall S. Morgan, President.

We have not imposed conditions upon our acceptance of the securities and have never intended to impose any conditions. However, we are quite naturally required to perform our obligations under the provisions of existing agreements and cannot waive the performance on the part of others of their obligations under those same agreements.

It was for this reason that we replied to the telegram quoted in your letter of April 25th as follows:

> "Re your telegram April 25. Securities have been accepted. Only condition is the performance of obligations imposed by existing agreements."

May we repeat that we have at no time either imposed any new conditions or intentionally taken any step which might be interpreted as doing so. We have, however, consistently endeavored to confer with someone authorized by you to confer with us

for the purpose of clearing the details which naturally must be taken care of in order that a matter of this size and complexity may be satisfactorily cleared. We have no doubt at all but that if such a conference were possible either between us and one of your representatives, or between someone representing our counsel, Morgan, Lewis & Bockius, and someone representing your counsel, the questions which must be straightened out could be promptly and satisfactorily disposed of.

Since our letter of April 3, 1945, following which we instructed our counsel to immediately arrange for the discontinuance of the pending litigation, we were advised by them that they promptly undertook to do so and gave the necessary instructions to Mr. George B. Thatcher of Thatcher and Woodburn, Reno, Nevada, Messrs. Morgan, Lewis & Bockius state that under date of April 7, 1945, Mr. Thatcher wrote them that the instructions given were sufficient and that he was immediately proceeding to carry them out; they further state that Mr. Thatcher has since advised them that Bruce R. Thompson, Esq., wrote Mr. Thatcher under date of April 18, 1945, as follows:

"I am informed by my clients in the above matter that I am not at the present time authorized to stipulation to a dismissal of the above designated action. Their unwillingness so to stipulate is the result of the failure of your clients to comply fully with the terms of the settlement and merger agreements. You are undoubtedly informed as to the details of this situation as there has been considerable

correspondence regarding it among the parties involved.

"Whenever I receive different instructions I will inform you."

Both our counsel, Messrs. Morgan, Lewis & Bockius, and we are prepared to meet with you or with your representative at any mutually convenient time.—Very truly yours,

/s/ M. S. Altemose, Vice President

MSA:DH

EXHIBIT DM-36

May 16, 1945

Fidelity Philadelphia Trust Co.,
Philadelphia, Pa.

Attn. Marshall S. Morgan, President.

Gentlemen:—

Your letter of May 2nd has been submitted to this meeting of the Board of Directors of this company.

The condition which you attach to the acceptances of these securities is noted. Your condition is stated to be "the performance of obligations imposed by existing agreements", which you say is your only condition.

This is to notify you that this company in acting under the settlement agreement of July 8, 1942, has performed all obligations imposed upon it by this contract down to clause VI thereof.

For your information we quote from clause VI the following:

"The parties hereto realize that it will be necessary to obtain certain sums of cash in Order to Consummate the Proposed Reorganization. All parties hereto agree to use their best efforts to obtain such cash in exchange for preference notes with the stock bonus as above provided. * * * ".

You have no authority to hold these securities subject to conditions which you may choose to impose, as condition precedent to their delivery, where such conditions precedent are not set forth in the contract of settlement, especially where you thereby interfere with the sale of the preference notes in violation of Clause VI.

We have not sent you these securities to hold but to exchange. We deny giving you any authority to hold the new securities. After ownership is passed to the old Bondholders you may hold these new certificates under their authority, if such is authorized by their contract with you. You have our authority to hold the old bonds after the exchange of ownership is effected.

You are on notice that these securities were voted to be issued based on assurances from the Debenture Holders Committee that all Debenture Holders on the list you sent us were obligated to exchange old securities for new immediately upon the events which were fulfilled when you received these securities. You were sent these securities for the purpose of fulfilling this obligation.

Please advise us when this exchange has been ef-

fected and we will immediately proceed to sell the preference notes provided for in Clause VI.

By Order of the Board of Directors,

Pioche Mines Consolidated, Inc.,
/s/ Augustus L. Putnam, Acting Secretary

EXHIBIT DM-37

Fidelity-Philadelphia Trust Company
Philadelphia (9), Pennsylvania

Air Mail June 18, 1945

Pioche Mines Consolidated, Inc.
Pioche, Nevada

Gentlemen:

Your letters of May 16th and May 28th have been received.

In our previous letters to you, we have endeavored to make clear that we are doing all within our power to cooperate with you in the proper consummation of the Merger and Settlement Agreements.

You have urged (1) that we accept for exchange the securities which we received and (2) that we discontinue the pending litigation.

We have advised you that the securities have been accepted for exchange and that we have instructed our counsel to take appropriate steps for the discontinuance of the pending litigation. We have also advised you that our counsel have been informed that your counsel will not now agree to this discontinuance of the litigation upon instructions from you.

We do not understand why, instead of having some one of your representatives confer with us or with our representative with respect to the clearing of the remaining details, you insist that we are imposing conditions (which we have not imposed) and are failing to take appropriate steps which we would gladly take if you did not object thereto. While we do not understand the necessity of so doing, we are very glad to again advise you that the securities which you forwarded to us have been accepted in exchange for the old and that both are now being held subject to existing liens and to the clearing of the necessary details in the final consummation of the Agreements. Further, we believe it may be pertinent to observe that we have never had any objection to your proceedings in accordance with your stated intention of taking such steps as may be appropriate in completing the program agreed upon.

In accordance with your request, we have read your letter addressed to the Committee as enclosed with your letter addressed to us under date of May 28, 1945, and while we are naturally concerned with your controversy with the Committee, we do not intend to become involved therein excepting so far as it may be necessary to maintain the integrity of our own position.

May we again repeat the suggestion (which we have already several times made) that we desist from further correspondence of this nature and put our joint efforts to the achieving of the results which you state your desire. We will be glad to meet with you or meet with your representative to

any convenient time in an effort to reach a working basis so that this may be done.

Sincerely yours,

/s/ M. S. Altemose, Vice President

MSA:DH

EXHIBIT DM-38

June 27, 1945

Fidelity Philadelphia Trust Company,
Philadelphia, Pa.

Attn. Marshall S. Morgan, President.

Gentlemen:—

Your letter of June 18th replying to our letter of May 16th is acknowledged.

The interpretation of your letter and the adjustment of interpretation between your letter of June 18th and a letter received the same day from the debenture holders' committee presents difficulties which would seem to call for another full meeting of our Board.

It would appear impossible for any officers of the company to take the responsibility of deciding whether your letter is intended to be an abandonment of your former position that the ownership of the securities would not be passed until your undefined requirements have been met, or whether you are now taking a new and different position to the effect that the old debenture bonds which were to be exchanged for the new income bonds sent you in April, 1944, are now dead, or whether they are still alive and assertable as a claim in contradiction of

the rights of those who would become purchasers of the preference notes authorized under the settlement agreement.

If it is in accord with your interpretation of your letter that the old bonds give way to the sale of the preference notes, we would request that you advise us to this effect in such definite terms as that your letter if submitted to our auditor will result in a balance sheet, showing that the new income bonds sent you are now a claim upon the assets of the company subsequent to the preference notes, and that the old debenture bonds are discharged by your acceptance of the new income bonds.

It is our construction of the settlement agreement that all parties are obligated to assist in the sale of the preference notes by giving them a prior position. In view of the conflicting statements in the various letters which have been written to us on this subject, it would appear entirely proper for those who would purchase preference notes to expect such a statement. Therefore to resolve these doubts which your letters have created we suggest that an auditors statement be authorized that would clear up these doubts, with a resulting balance sheet which would show that the exchange has been effected.

Your reluctance to give us a clear statement of your position which could be clearly construed as consistant with the priority in interest which the settlement agreement intends to be accorded to the preference note holders have created fears in the minds of those who would otherwise long before this have purchased the preference notes. An auditor's

statement and balance sheet to be used as a basis for the sale of preference notes would be the best means of clarifying these fears entertained by prospective preference note purchasers.

Any conflicting statement or ambiguities that may be read into your recent letters can be cleared up by a balance sheet showing the new bonds sent you as active and the old bonds as dead. And if that is the meaning you intend to be accorded your letter of June 18th, it will be very easy for you to make this statement.

Very truly yours,

Pioche Mines Consolidated,
/s/ E. G. Woods, Secretary.

EXHIBIT DM-39

Fidelity-Philadelphia Trust Company
Philadelphia (9), Pennsylvania

Air Mail July 6, 1945

Pioche Mines Consolidated
Pioche, Nevada
Attention: Mr. E. G. Woods, Secretary

Gentlemen:

This is to acknowledge the receipt of your letter of June 27, 1945, wherein you make certain statements and ask certain questions.

While in your statements you indicate that you are of the opinion that our letters have not been clear, that there is uncertainty as to our present position and that we have imposed certain "unde-

fined requirements", we must deny that there exists any basis whatever for any such conclusions. Throughout our correspondence we have made every effort to be completely candid, to state our position with clarity and to convey to you our desire to discuss with your representatives any points which required clarification, pointing out that we believed it would be to our mutual advantage if a conference could be arranged so that the necessary details and such differences as might exist could be freely discussed and settled. We have always believed that if such a conference were had all of the questions which you may have would be promptly and satisfactorily settled. You have consistently refused to accept our suggestion that such a conference be had. We repeat that we believe it would be most helpful if either your counsel or someone representing your Company could arrange to meet with us or with our counsel so that such problems as you may think still exist can be satisfactorily and finally cleared.

However, in spite of your seeming unwillingness either to meet with us or have your counsel confer with our counsel so that real progress may be made without delay, we shall endeavor to answer again the questions which you put in your letter of June 27th.

This Company is both Trustee and Depositary. It has repeatedly stated its desire and intention to take every required step in the consummation of the Merger and Settlement Agreements and to do

all within its power to cooperate to that end. There has been no change in its position. There are no undefined requirements. In the bringing about of the objectives of the Merger and Settlement Agreements, there are certain steps which must be taken by this Company and there are certain steps which must be taken by others who are parties to those Agreements; certain of these steps must be taken by Pioche Mines Consolidated which is the principal party involved therein. If Pioche Mines Consolidated takes all of the steps which it is required to take under those Agreements, there is no question but that the old debenture bonds will be dead and there is no question but that the new income bonds sent to this Company in April of 1944 (and which this Company has accepted in exchange for the old bonds) will be valid obligations of the Company. In our opinion there should be no question at all but that all appropriate steps will be taken and that as a result no one will be in a position to raise any question about either the complete termination of any validity of the old bonds or the full life of the new bonds.

It follows that if your Company takes the steps required of it by the Agreement, the old bonds will give way to the sale of the preference notes. However, the only party who is able to answer the question as to whether your Company will perform its obligations is the Company itself. You and your counsel must supply the necessary certificates for your auditors.

We agree with your construction of the Settlement Agreement that all parties are obligated to assist in the sale of the preference notes. We do not agree that our letters have contained conflicting statements.

While we have not heretofore so suggested, it has been our belief that a pro forma balance sheet should have been prepared some time ago by your Company showing just what the effect of the reorganization will be and we believe that the preparation of such a balance sheet showing the status of the Company after the reorganization has been effected will be helpful to all parties.

There has been no reluctance on our part to give you a clear statement of our position. We have made every effort to write with clarity and we stand ready to confer with your representatives at any time. We have no doubt whatever but that if your Company performs its obligations under the Agreements, the new bonds will continue to be valid and the old bonds will be dead. The answer to the questions which you put depends entirely upon the procedure to be followed by your Company, the good faith of which we have assumed.

Very truly yours,

/s/ M. S. Altemose, Vice President

MSA:DH

EXHIBIT "B"

[Title of District Court and Cause No. 101.]

AFFIDAVIT IN SUPPORT OF MOTION FOR DEPOSIT IN COURT

State of Nevada, County of Lincoln, ss.

E. G. Woods, being first duly sworn deposes and says:—

That he is Secretary and Treasurer of Pioche Mines Consolidated, Inc., defendant in the above entitled case, and has been at all times since the commencement of this action;

That as such he is keeper of the accounts and records of said company and that he is familiar with the correspondence between said company and Fidelity Philadelphia Trust Company, Debenture Holders' Committee and Percy H. Clark during the period stated;

That he signed as Secretary at the order of the Board of Directors and at the order of the stockholders' meeting many of the letters which were sent to Fidelity Philadelphia Trust Company and Debenture Holders' Committee;

That at no time from July 15, 1943, the date of the commencing of the stockholders' meetings, which were called to vote upon the proposed merger, down to December 3, 1943, did said stockholders meetings have any satisfactory reply to the question of said meeting addressed to Debenture Holders' Committee and Fidelity Philadelphia Trust Company, asking which Debenture Holders had given their consent

to the terms of the Settlement Agreement as provided for in Paragraph VII thereof.

That at no time did the Directors' meeting receive a satisfactory statement from Fidelity Philadelphia Trust Company or Debenture Holders' Committee in conformity with which an issue of new securities could be made for their accounts without involving the company in an over issue of securities;

Affiant avers that all accounting and recording of any and all transactions in the books of the company kept at Pioche, Nevada, relating to the debenture issues of 1929 and 1930 were based upon information transmitted through correspondence from Percy H. Clark, as the officer in charge of Debenture Subscriptions. That said information contained in correspondence of Percy H. Clark is confusing, misleading, contradictory, inconsistent and incorrect.

That in the summer of 1939 an audit of the accounts of the company were conducted by the auditing firm of Barrow, Wade, Guthrie Company of Philadelphia at the insistence of the Pioche Debenture Holders' Committee. That Mr. George H. Lieb, Certified Public Accountant representing said firm, admitted to me that he found it impossible to determine the true status of the Debenture accounts from the information at hand and stated that upon his return to Philadelphia he would advise his firm of the necessity of an audit of the bond accounts kept by said Percy H. Clark as being essential to a complete audit of the accounts of the company, but

such audit of said accounts was never furnished us.

That in February, 1940, an attempt was made by defendant Pioche Mines Consolidated, Inc., to clear up the confusion and inconsistencies in the bond accounts of Percy H. Clark, who had theretofore had sole charge of requisitioning bonds and collecting therefor, and who had theretofore kept, and had charge of keeping, in Philadelphia, of all records pertaining to said bonds, by a demand made by said Pioche Mines Consolidated, Inc., upon said Percy H. Clark for an audit of his Debenture account but that such demand for an audit was refused by said Percy H. Clark.

Affiant also avers that Mr. Frank G. Shaw, Certified Public Accountant of the firm of Hartshorn and Walter of Boston, was retained to audit the accounts of defendant company for the stockholders' meeting held in Pioche on July 15, 1943. That it was impossible for said auditor to determine from information at hand that defendant company had received from Fidelity Philadelphia Trust Company or from Percy H. Clark the amount of Debentures which would be outstanding after the merger, and for that reason it became impossible for him to prepare a pro-forma balance sheet in time for presentation to the meeting of Stockholders of the company, which would represent accurately the debt structure of the new company if and when formed.

That information relating to debentures outstanding furnished to the firm of Hartshorn and Walter, auditors, by Percy H. Clark, in his letter to them of August 27, 1943, was not consistent with letters

written by Percy H. Clark to the company and others, for example:—

Clark letter to John Janney, dated November 27, 1936

Clark letter to John Janney, dated February 21, 1940

Clark letter to Richard E. Dwight, dated July 9, 1943.

Affiant further avers that Percy H. Clark letter to Fidelity Philadelphia Trust Company, depositary under Debenture Holders' Agreement, dated November 22, 1943, contains information contrary to that contained in his letter to Richard E. Dwight, the New York attorney for defendant company, of July 9, 1943.

That information relating to debentures contained in letter of Mr. Ringe of Morgan, Lewis & Bockius, Counsel for Fidelity Philadelphia Trust Company to Richard E. Dwight, Counsel for Defendant Consolidated Company, dated February 27, 1945, is not consistent with information contained in letter of Debenture Committee to Fidelity Philadelphia Trust Company under date of November 22, 1943.

That defendant, Pioche Mines Consolidated, Inc., repeatedly requested an audit of the debenture account but such audit was not furnished.

Attached hereto and marked Exhibit W 1 to 13 inclusive, are true copies of the letters, reference to which is heretofore had in this Affidavit.

That the deposit in this Court of the debentures claimed to be held by Fidelity Philadelphia Trust Company, together with the authority for holding

same would enable the accountants of said defendant Pioche Mines Consolidated, Inc., to determine what new securities can be issued without causing an over issue of securities.

/s/ E. G. Woods

Subscribed and sworn to before me this 18th day of October, 1947.

[Seal] /s/ Glenda P. Quirk,
Notary Public in and for the County of Lincoln, State of Nevada.

EXHIBIT W-1

Mr. John Janney November 27, 1936
551 Fifth Avenue, New York City.

Dear John—

I promised to send you a statement of the amount of debenture interest accumulated up to October 31, 1936, represented by scrip issued and overdue coupons not yet surrendered in exchange for scrip. I will take as my basis for making these figures the outstanding debentures as set forth in the old Prospectus, to-wit:

Debentures of the 1929 issue.....$416,300
Debentures of the 1930 issue.....$185,750

In the case of the debentures of the 1929 issue, the Company originally sold $419,600 of debentures, which were delivered to the subscribers. $3300 of these debentures have been converted into stock, leaving the $416,300 indicated. The Trustee has, in

addition, certified $60,000 of these debentures which are in the custody of the District National Bank but my information is to the effect that these debentures have never been pledged for any loan, although the Company owes a balance to the Bank.

The Trustee has certified and delivered to the Company $211,000 in face value of the debentures of the 1930 issue. The $185,750 of debentures mentioned in the prospectus are made up as follows:

Outstanding in the hands of the public	$161,000
Subscribed and paid for by Theodore Brown but never delivered because of failure to pay balance of $5000 subscription	2,250
Subscribed and paid for by Lee but never delivered because of failure to pay balance of $23,000 subscription	12,500
Pledged with Kansas City Structural Steel Company	10,000
Total	$185,750

The remaining $25,250 of debentures certified are debentures delivered to the Company, part of which have never been subscribed for and the balance of which are held against Lee's and Brown's unpaid subscriptions. Probably, it will never become necessary to issue scrip in payment of interest on the debentures pledged with the Kansas City Structural Steel Company and I do not know what adjustment will be made with Brown and Lee. With this explanation, I will make the interest calculations as follows:

As above indicated, the total amount of debentures outstanding is $602,050. Interest was first paid on the debentures of the 1929 issue in scrip on July 1, 1931 and there have been 11 interest payments made in scrip down to and including July 1, 1936, of 3½% each, a total of 38½%.

The same percentage applies to the debentures of the 1930 issue as the first interest payment was made in scrip on October 1, 1931 and the 11th and last was made on October 1, 1936.

38½% of $602,050 amounts to $231,789.25. This is the amount of scrip issued or issuable against overdue coupons down to and including October 31, 1936 but it does not include interest on the debentures of the 1929 issue accrued from July 1, 1936 to October 31, 1936, nor interest on the debentures of the 1930 issue from October 1, 1936 to October 31, 1936.

No debentures are issuable in denominations of less than $100 and there are no coupons of a denomination less than $3.50. The odd 25c in the interest calculation results from the fact that Theodore Brown has paid up $2250 of his subscription in cash and for the purposes of the calculation I am considering that he is entitled to the payment of interest in scrip.

I note that in the capitalization setup on page 8 and the balance sheet on page 10 of the old Prospectus, the amount of scrip outstanding is given as $208,150.69. I have been doing some figuring but have not been able to check the figure stated. The figure seems too high for the date July 31, 1935 on

any basis that I can imagine. It might be that the date of the Prospectus was used but this does not account for the figure set forth in the balance sheet dated July 31, 1935.

Very truly yours,

/s/ Percy H. Clark

PHC-W

[Printer's Note: Exhibit W-2 is a duplicate of PC-3 which is set out at page 292]

EXHIBIT W-3

December 5, 1942

551 Fifth Ave., Suite 1810, New York

Mr. Percy H. Clark,
1500 Walnut St. Bldg.,
Philadelphia, Pa.

Dear Percy—

I have to acknowledge receipt of copy of the long letter of November 28th, which you wrote to Mr. Richard E. Dwight.

As soon as the form of Merger Agreement can be set up in a manner satisfactory to the attorneys of all parties concerned, I am ready to submit same to the Board of Directors of the three companies in such final form as may be agreed upon, and meantime will be waiting with some impatience for this accomplishment.

I believe it was agreed at the meeting on October 23rd, in Mr. Dwight's office with you, Mr. Gerhard and Mr. Holden present, that the figures to go in the

agreement will conform to par. 1, Sec. a 2, of the Settlement Agreement——

> "The principal of all other debts justly owed by the company as certified by Mr. Woods and an independent accountant."

The Directors will start the work of the accountants as soon as possible after receiving the Merger Agreement in such definite form that it will not be affected by any subsequent changes or suggestions by the attorneys of any of the parties to the said Merger Agreement.

I believe it is my function as the President of two of these companies to leave the attorneys to work out the form of Merger Agreement. Nevertheless I am interested in your letter of the 28th to Mr. Dwight and thank you for sending me copy of same, and I have forwarded copy of it to Boston for the attention of the Boston Committee who are signers also to the Settlement contract and therefore entitled to a copy.

In connection with your letter to Mr. Dwight, I deem it important to call your attention to certain parts of your letter:—

I.

In par. 3 you say "the committee recognizes the matter of bringing in an independent accountant at this time is not deemed desirable by Mr. Janney because of additional expense and delays involved and for other reasons".

There was nothing said by me in the meeting on Oct. 23rd intended to give any such impression; on

the contrary it was agreed that we all desired to have an independent accountant to certify to the figures. I would now like to emphasize that it is still my desire, and ask that you correct any impression to the contrary which your letter of Nov. 28th may have occasioned.

II.

On page 5, par. 4, you say "Mr. Gerhard loaned Mr. Janney $10,000. early in 1930 which was turned over to the Pioche companies." The fact is that Mr. Gerhard did not loan me $10,000.

Mr. Gerhard had subscribed to $25,000 of Pioche Mines Consolidated debentures along with another member of the Philadelphia group of debenture holders with a view of making a profit out of the subscription. After a payment of $5000. on this subscription, Mr. Gerhard wishes to be relieved from the obligation of the remaining $20,000. A conference was held in your office between Mr. Gerhard the subscriber, Mr. Percy Clark the attorney for the Company and Mr. Janney, President of the Company.

The proposition considered was that Mr. Gerhard would loan the company $10,000. and then he would be released from his subscription. Mr. Clark and Mr. Janney both seemed to feel this was a fair arrangement and $10,000 was loaned by Mr. Gerhard to the Pioche Mines Consolidated (not to Mr. Janney) and the money was deposited in bank to the credit of the company.

It went on the books as a payment on Mr. Gerhard's subscription. To cover the transaction tem-

porarily until it would be finally ratified and approved, Mr. Janney asked Mr. Gerhard to take his personal note to cover the $10,000. The understanding was that this would be replaced by company note at the maturity which I believe was 90 days, upon request from Mr. Gerhard. Mr. Gerhard never made any request for replacement of company note.

The $10,000 was carried in the company's books as payment on Mr. Gerhard's bond subscription. At the time of Mr. Lieb's visit to Pioche, in going over the matter of payments on subscriptions, I happened to be present in the office at the time. Mr. Woods showed Mr. Lieb the item of $10,000 coming from Mr. Gerhard; as a result of this item, there was $10,000 overpayment to the debenture account in the company's books, as compared with statements received from yourself as the officer in charge of debenture subscriptions and keeper of the records pertaining thereto.

If this matter is not shown on Barrow, Wade, Guthrie & Co.'s statement it is not because the above information was not given to Mr. Lieb their agent, from the company's record of accounts at Pioche.

III.

As to certain other matters contained in your letter of November 28th which should be answered, I believe the attorneys are qualified to make reply to them.

I might add this one observation: I note the debenture-holders Committee is taking the position that the debenture holders who received interest in

cash up to July 1, 1930 are to be given a preference position, as against other creditors who did not collect interest up to that date.

I say I note this is to be the position of the debenture-holders Committee. I have nothing to say as to this position, except to say that a mistake was made in leaving this particular provision out of the final draft of the Settlement Agreement, which I did not see until after it had been submitted to the bondholders' Committee. I do not wish to make a point of this now, nor did I wish to make a point of it then,—I only wish to have a position taken by the debenture-holders' Committee with reference to it.

As to those stockholder-creditors who were not parties to the Settlement Agreement, this becomes a matter of inequity that will have to be adjusted by some one assuming the burden of these payments to such an extent as will reinstate the equity of their position. This can be arranged.

IV.

As to Pre-Trial conference questions, these were duly answered and a number of copies sent to our attorneys in Reno for proper service and distribution.

Five copies of these papers were sent to the attorneys in Reno in time to arrive there May 19th and their arrival on that date was duly acknowledged.

Very truly yours,

/s/ John Janney

EXHIBIT W-4

551 Fifth Avenue, Suite 1810, New York

Mr. Albert P. Gerhard, February 13, 1943
1930 Land Title Bldg., Philadelphia, Pa.

Dear Mr. Gerhard—

With further reference to your letter of December 10, 1942, in which after suggesting that the Kansas City Structural Steel Co. bonds when released could be paid over to you, you say:

> "It seems to me that it does not make much difference whether I receive the note or the bonds, as in either case I would receive new income bonds for the principal amount and stock for the interest."
>
> "I would like to know definitely, however, which way this $10,000. payment made by me is going to be handled."

I am now in position to advise that the auditor has recommended that inasmuch as the $10,000, which was paid in by you shows as a deposit made on June 8, 1931 to the account of the company with E. W. Clark & Company, bankers, and since this entry was included among other payments on bond subscriptions, it would be the proper solution for this problem to cover this transaction in a certificate setting it up under "contingent and other liabilities". This liability is to be discharged in conformity with Settlement Agreement by the delivery to you of $10,000. of bonds just as if you had received the bonds for the subscription payment.

The bonds would be delivered to you upon the delivery to me of the note you hold for $10,000. signed by myself to your order. As this is in accordance with your letter of December 10th, and in accordance with Mr. Dwight's suggestion that the matter should be left to the auditor to determine, I presume this will be a satisfactory settlement and would like to have you advise me as to your wishes in the matter.

Very truly yours,

/s/ John Janney

EXHIBIT W-5

Mr. Richard E. Dwight, July 9, 1943
100 Broadway, New York

My dear Mr. Dwight:

This will acknowledge receipt of your letter of the 7th.

I think I have already sent you piecemeal nearly all of the information you want, but this letter will consolidate the information in form to be presented to your auditors.

You will find enclosed original certificate of Fidelity-Philadelphia Trust Company dated April 12, 1943 certifying information as to the outstanding debentures which shows $687,300. of debentures to be outstanding. The difference between the $602,050 of bonds shown on the balance sheet as outstanding and the $687,300 shown by the Fidelity's certificate is made up as follows:

Held by District National Bank, for account of the Company	$60,000
Subscribed for by Gerhard and certified and delivered to E. W. Clark and Co., but not taken up by Gerhard	10,000
Subscribed for by Faraley and delivered to E. W. Clark & Co. but subscription cancelled	2,000
Part of $25,000 subscribed for by Lee and delivered to E. W. Clark & Co. and not paid for—to the extent of	10,500
Part of $5,000 subscribed for by Brown and delivered to E. W. Clark & Co. but not paid for—to the extent of	2,750
	$85,250

The $602,050. of bonds shown as outstanding on the balance sheet does not include the $10,000. of bonds subscribed for by Albert Gerhard. The figure appearing in Seventh 1. (a) of the Merger Agreement should have been changed to $612,050. when we agreed to include Albert Gerhard as one of the debenture holders. The $10,000 of bonds held as collateral by the Kansas City Structural Steel Company are included in the $602,050. figure, and if Mr. Janney arranges to have them surrender for cancellation, the $602,050. figure in the Merger Agreement will be sufficient to include Gerhard's bonds.

You will find attached hereto a copy of a letter addressed by E. W. Clark & Co. to Hartshorn and Walter in Pioche certifying to certain facts relating to E. W. Clark & Co.'s loan and the bonds which that firm holds as collateral. According to my understanding the $602,050. of bonds shown on the balance sheet includes the amounts paid by Brown and Lee on account of their subscriptions, but does not include the unpaid balance of the subscriptions not paid as shown on theabove tabulation, nor does

this figure include the Gerhard and Fraley bonds. It does include the $10,000 of bonds pledged with Kansas City Structural Steel Company.

The following is a statement of bonds which have assented to the plan:

Deposited with Fidelity-Philadelphia Trust Company under Debenture-Holders' Agreement			$530,100
Assents secured by Debenture-Holders' Committee:			
	1929	1930	
Estate of Charles Wheeler, dec'd	$10,000	$10,000	
Wm. Innes Forbes		5,000	
Harry D. Belt		1,000	
Estate of James Crosby Brown	3,000		
Oliver H. Cover (Hodgson)	1,000		
Heyward E. Boyce (Naylor)	5,000		
Walter L. Rogers	1,000		
Stuart Farrar Smith	5,000		
Ivan F. Goodrich	100		
Estate of E. T. Stotesbury	10,000		
Elizabeth Stanley Trotter	10,000		
Grace T. Whitney	1,000		
Estate of Mary S. Thayer		5,000	
	$46,100	$21,000	67,100
			$597,200
Consents secured by John Janney as set forth in his letter of March 12 to you:			
	1929	1930	
Gilbert R. Payson (Estate of Charles E.)	$ 500		
Lawrence R. Lee	10,000		
Estate of Grace T. Train	1,500	$ 1,000	
Margaret P. Chew (Estate of Roger Chew)	1,000		
Estate of Otto U. Von Schrader	2,500		
Elliot A. Hunt	1,000		
District National Bank	60,000		
Kansas City Structural Steel Co		10,000	
	$76,500	$11,000	87,500

Non-assenting debenture-holders:	1929	1930	
A. J. Harper		$ 1,000	
Hooper S. Miles	$ 100		
Samuel L. Munson		500	
Mary Tancred	500		
Estate of Dr. Landis	100		
George B. Page	400		
	$ 1,100	$ 1,500	2,600
			$687,300

I have included Grace T. Whitney, $1,000., under heading of assents secured by the Debenture-Holders' Committee. Mr. Naylor saw Mr. Whitney several times and the latter arranged that Mrs. Whitney would send her assent to John Janney.

I have included under consents secured by John Janney the bonds held by District National Bank, $60,000., and Kansas City Structural Steel Company, $10,000., although he has not advised that these consents have actually been secured. On the other hand I have not included the Brown and Brooks bonds which Mr. Janney mentions in his letter because these bonds are already deposited with Fidelity and are included in the $530,100 figure.

Concerning the non-assenting debenture-holders, I have the following information:

Harper, $1,000.—This bond is now held in an estate of which I understand Mr. Harper's two brothers are executors. Mr. Naylor has seen one of the brothers several times. They would like to sell their bonds.

I have no information about Miles $100.

The Munson $500. bond is lost.

John Janney has indicated he is following up

Tancred, $100. Mary Tancred was Mr. Von Schrader's cook. She died and the bond is now held by the Davenport Iowa Trust Company presumably in her estate.

Landis, $100.—I believe this bond will come in if the plan goes through.

Page, $400.—I talked with George Page and he has promised to drop in at this office. I believe the only thing that prevents him from depositing his bond is inertia.

I hope this will give you the information you want.

In view of the short length of time before the meeting, I am mailing a copy of this letter and enclosures airmail to Mr. Woods in Pioche, I spoke to your secretary about this and she thought it would be a good idea.

Very truly yours,

/s/ Percy H. Clark

EXHIBIT W-6

Mr. Percy H. Clark, August 2, 1943
1500 Walnut Street Bldg., Philadelphia, Pa.
Dear Sir:

The auditor wishes additional information of your accounting of the bond transactions conducted under your authority as Vice-President. This information is made necessary by conflicting statements brought to our attention by the auditor, which are contained in various letters from you to us and to Mr. Dwight.

1. For our records we would like to know under what authority you acted in the deposit of the bonds of L. R. Lee, with E. W. Clark and Co., as collateral

to a company note. Also authority for the use of the bonds of Theodore E. Brown and Albert P. Gerhard. Our records show that you had authority for the deposit of the bonds that were not paid for, and no authority for the bonds that were paid for.

2. Referring to Albert Gerhard's subscription, our records show deposit was made by you in E. W. Clark and Co., on June 8th, 1931, of $10,000.00. This deposit was credited on our books in the absence of advice from you to the contrary under bond subscriptions. Nothing but deposits from bond subscriptions were made to the E. W. Clark Bankers account at that time. Your letter of July 9th seems to conflict with this when you say Gerhard paid his subscription "in the form of a loan to John Janney".

If the payment of $10,000 by Albert Gerhard was deposited to the company's credit with E. W. Clark and Co., on June 8th, 1931, this could not be a loan to John Janney as stated in your letter.

3. As to the matter of $602,050. being the amount of bonds issued:

(a) With reference to Albert Gerhard's subscription, raising the amount to $612,050. the Board of Directors never approved the cancellation of Albert Gerhard's unpaid subscription. In fact the Board of Directors never received a recommendation from the company's attorney advising that the rights of other subscribers did not make it ill advised to release unpaid subscriptions without reference to the rights of other subscribers. Therefore the 10,000 additional bonds to Albert Gerhard are to be paid by

the merged company, and after the merger is completed, and as a settlement of this account.

(b) With reference to Kansas City item: In your letter of July 22nd you state that the Kansas City $10,000 bonds are outstanding. In previous reports you show these bonds were used as collateral security to the note of the Kansas City Company. How do you reconcile these statements?

4. In previous letters you make a statement which we wish to point out is incorrect, wherein you say that in a certificate attached to Mr. Simon's audit of February 7, 1943, Mr. Janney and Mr. Woods report certain obligations of the company, not shown on the books. You should be advised for the record that all obligations of the company were shown on the books of the company, and that the certificates you have incorrectly quoted refers to items agreed to be paid in the settlement agreement. They were not obligations of the company at the time of the audit, nor will they be obligations of the merged company until the Settlement Agreement is approved by stockholders' meeting and papers filed.

5. There are other conflicting statements in your various reports which make it difficult to audit the bond account, and it would appear that the best procedure would be for you to submit a complete statement, duly certified, of your handling of the bond issues of this company from the beginning down to the date of your tendered resignation, giving in detail as footnotes such explanations to the transactions as would appear necessary or advisable.

We have never had an audit of your account and what we wish is something from you that we can consider a final and complete statement, and which we could use in lieu of an audit.

Very truly yours,

/s/ E. G. Woods, Secretary

EXHIBIT W-7

Clark, Hebard & Spahr
Philadelphia 2, Pa.

E. G. Woods, Secretary August 10, 1943
Pioche Mines Consolidated, Inc., Pioche, Nevada
My dear Mr. Woods:

This will acknowledge receipt of your letter of August 2 which came by this morning's mail. Mr. Janney can give you the answer to practically all of these questions which, however, I will answer briefly as follows:

1. The company's note was given to E. W. Clark and Co. and the debentures of Lee, Brown and Gerhard were deposited with E. W. Clark and Co. pursuant to authority given to me in writing by John Jannet. I know nothing about your records but the authority from Janney is definite.

2. I know that Albert Gerhard signed a subscription for $10,000 of debentures and sent me his check with instructions to deposit it to the credit of the company. I have never been advised as to how this matter was treated on the company's books. My statement that Gerhard put his subscription "in the form of a loan to John Janney" is based on information given to me by John Janney and Albert

Gerhard. This is an accounting matter arising out of the side arrangement made by Janney with Gerhard undisclosed at the time.

3.(a) Whatever way the accountants want to treat Albert Gerhard's $10,000 advance makes little difference provided he gets the new securities to which he is entitled as agreed.

(b). The Kansas City bonds were certified and delivered by the trustee in accordance with instructions from the company. They have never been returned to the trustee and the trustee's records, therefore, show them as outstanding bonds and they must be so considered until returned to the trustee for cancellation. I understand the $10,000. of bonds alleged to have been pledged with Kansas City Structural Steel were included in the $602,050 bonds certified as outstanding by Mr. Simon in the balance sheets attached to the prospectuses registered with S.E.C.

4. This is unimportant but you will find that Mr. Simon in his certificate of February 7, 1943 referred to the obligations in question as "Liabilities not reflected on the books of the company" I understand the directors of the company have approved the Settlement Agreement which recognizes these liabilities.

5. I have already submitted full information to the company, and this is an auditing matter to be handled by the accountants.

Very truly yours,

/s/ Percy H. Clark

PHC-mac

EXHIBIT W-8

Northeast Harbor, Maine
Messrs. Hartshorn & Walter, August 27, 1943
50 Congress Street, Boston, Massachusetts

Gentlemen:

This will acknowledge receipt of your letter of August 12th.

I do not think Fidelity Philadelphia Trust Company knows the amount of Debentures that have been paid for. It certified the Debentures that are outstanding on the basis of written orders delivered to it in accordance with the Trust Agreements but did not have anything to do with the cash paid for Debentures.

I did not handle either the Debentures or the cash paid for them but had general supervision over those parts of the transaction that were handled by Fidelity and E. W. Clark & Co.

E. W. Clark & Co. were engaged in a general banking business at the times when the Debentures were sold and subscriptions to Debentures of both issues were made payable in instalments at the office of that firm. The Debentures that had been subscribed for were certified by Fidelity from time to time and delivered to E. W. Clark & Co. which issued its receipts for instalment payments as received and delivered the Debentures to the subscribers as they respectively paid their final instalments.

Debentures of the 1929 issue to the total amount of $419,600. were duly certified by Fidelity and delivered to E. W. Clark & Co. and subscriptions to

the same amount were paid in full and the Debentures delivered to the subscribers. The full amount of cash received from subscriptions was deposited with E. W. Clark & Co. to the credit of Pioche Mines Consolidated, Inc. which had opened a deposit account with that firm. These figures have been verified by E. W. Clark & Co. At a later date $3,300. of Debentures of the 1929 issue were converted into stock and on July 8, 1942 Debentures which had been sold for cash were still outstanding to the amount of $416,300., as certified by Fidelity.

At the time of the sale of Debentures of the 1930 issue an additional $60,000. of Debentures of the 1929 issue were certified by Fidelity on a written order signed by me (I think) and sent by registered mail to The District National Bank of Washington, D. C. This was done at the request of John Janney.

I have been advised by Fidelity that when these $60,000 of Debentures of the 1929 issues were sent to The District National Bank their maturity date was January 1, 1934, they have never been extended, none of the coupons have ever been presented to Fidelity for payment nor have coupons maturing subsequent to January 1, 1934 ever been attached to these Debentures as in the case of other Debentures of this issue. These Debentures are included in the $476,300. of Debentures of the 1929 issue which Fidelity has certified to be outstanding as of July 8, 1942.

The facts relating to the Debentures of 1930 are somewhat more complicated. John Janney took personal charge of securing subscriptions and all of them have not been fully paid so far as my records

show and I think he is the only person who can supply the information missing from the following statement.

As in the case of Debentures of 1929, subscriptions to the Debentures of 1930 were payable in instalments at the office of E. W. Clark & Co. and were not to be binding until $250,000. of Debentures had been subscribed for. Janney succeeded in securing subscriptions to something over $150,000. He then seemed unable to secure any further subscribers in Philadelphia and went to Washington. In a few days he returned with new subscriptions signed by himself for $50,000. and by Lawrence R. Lee for $25,000. This left them a little less than $25,000. short of the minimum amount required to bind subscribers and John Zimmermann, Charles Wheeler and I then underwrote this amount in consideration of a stock commission and with the promise by Janney that he would place these Debentures and thereby relieve us of the subscription.

Subscriptions were called for payment at the office of E. W. Clark & Co. Janney stated he would pay his $50,000. direct to the Company, treat the matter as he had treated previous advances and it would not be necessary to issue Debentures to him. Fidelity certified and delivered $200,500. of Debentures to E. W. Clark & Co. in accordance with the Trust Agreement. Subsequently John Janney requested that $10,000. of Debentures of the 1930 issue be certified and delivered to Kansas City Structural Steel Co., a credit of Pioche Consolidated, to be held as collateral for the amount due. So far as I know, the Company received no cash for the Debentures so

pledged. At the time these Debentures were certified and sent to Kansas City Structural Steel their maturity date was October 1, 1937—they have never been extended, none of the coupons attached have ever been presented to Fidelity for Payment, nor have coupons maturing subsequent to October 1, 1937 ever been attached to them, as in the case of other Debentures of this issue. These Debentures are included in the $211,000. of Debentures of the 1930 issue which Fidelity has certified to be outstanding as of July 8, 1942; also a $500. Debenture certified and delivered to Janney for the account of an engineer named Munson, in payment for services rendered. I have been told Munson is dead and his wife was unable to find the Debenture which presumably is lost.

The Debentures of the 1930 issue can be accounted for as follows:

Subscriptions paid in full, Debentures delivered to subscribers and still outstanding		$160,500
Subscriptions paid in part only and Debentures not delivered to subscribers:		
Theodore E. Brown paid on account of $5000 subscription		2,250
Lawrence R. Lee paid on account of $25,000 subscription		12,500
Lee sold $2,000 of the Debentures for which he had not paid in full which were credited on account of his subscription, thus reducing the amount unpaid by him to $10,500. The $2,000 paid for the Debentures he sold is included in the $160,500 figure above.		
Dr. Frederick Fraley subscribed for $2,000 of these Debentures but was subsequently released from his subscription and the bonds were held by E. W. Clark & Co.		2,000
Debentures delivered to Kansas City Structural Steel Co.		10,000
Debentures delivered to Munson		500
Unpaid balance of part paid subscriptions:		
Lawrence R. Lee	10,500	
Theodore E. Brown	2,750	13,250

Debentures subscribed for by Gerhard but not delivered to him because of a collateral arrangement made between him and Janney involving the loaning of the money to Janney on his individual obligation. The money, $10,000, was paid by Gerhard to E. W. Clark & Co. but that firm, pursuant to Gerhard's request, did not deliver the Debentures to him. The $10,000 is not included in the $160,500 above. The arrangement between Gerhard and Janney was reduced to writing and I feel sure Gerhard will be glad to send you a copy if you desire to inspect it 10,000

Total outstanding Debentures of 1930 issue as certified by Fidelity $211,000

The above table shows that cash was paid on account of subscriptions to Debentures of the 1930 issue as follows:

Those who paid subscriptions in full	$160,500
Brown and Lee in part payment of their subscriptions	14,750
Gerhard in satisfaction of his subscription but pursuant to his separate arrangement with Janney	10,000
Total cash paid to E. W. Clark & Co. on account of subscriptions to Debentures of 1930	$185,250

Subscriptions not paid:

Fraley	$ 2,000	
Brown	2,750	
Lee	10,000	
		15,250
Janney's subscription		50,000
Total		$250,500

The total amount of Debentures paid for in cash to my knowledge, is:

Debentures of 1929	$419,600
Debentures of 1930	185,250
	$604,850

The above answers your question to the extent I can answer it. However, the following may be helpful to you:

Zimmermann, Wheeler and I paid in full the $25,000. of subscriptions underwritten by us and these amounts are included in the $160,500. of subscriptions paid in full.

I relief upon Janney to pay his $50,000. direct to the Company in the manner above stated and considered this would constitute satisfaction of his subscription obligation. No debentures have ever been issued on account of his subscription.

The Debenture-holders' Committee recently gave Janney the choice of classifying Gerhard as a Debenture-holder or as one of the other creditors for the purpose of these Agreements. He elected to include him as one of the class of Debenture-holders. The $10,000 of Debentures issued on account of his subscription and pledged with E. W. Clark & Co. will be freed from the pledge when the amount due that firm is paid.

The Debentures certified and delivered to E. W. Clark & Co. but not delivered by that firm to subscribers, to wit:

Lee $25,000 less $2,000 sold	$23,000
Brown	5,000
Fraley	2,000
Gerhard	10,000
Total	$40,000

were pledged under a collateral demand note for $3.700. given by Pioche Consolidated to E. W. Clark & Co. for cash advanced. The unpaid subscriptions of Lee and Brown were also pledged. The note was subsequently reduced to $2,000. and interest paid to September 30, 1937.

These debentures ($40,000) have been deposited with Fidelity under the Debenture-holders' Agreement of February 1, 1939 and E. W. Clark & Co. holds Fidelity's non-negotiable receipt for collateral deposited.

Any additional information concerning the payment of Janney's $50,000 subscription, and other subscriptions, should be secured from the books and records of the company and Janney himself.

The information given above is, I think, all to be found in the files of Pioche Consolidated and without doubt repeats facts with which you are already familiar. I have tried to write a complete account in order to avoid further delays.

I am sending this letter to Philadelphia to be checked, rewritten and returned to me for signature.

Very truly yours,

/s/ Percy H. Clark

PHC:M mac

EXHIBIT W-9

November 22, 1943

Fidelity-Philadelphia Trust Company, Depositary under Debenture-Holders' Agreement dated as of February 1, 1939

135 South Broad Street,
Philadelphia 9, Pa.

Gentlemen:

Fidelity-Philadelphia Trust Company as trustee under the two Pioche Mines Consolidated, Inc. trust agreements has advised the undersigned Committee

there are outstanding under the trust agreement dated January 2, 1929, $476,300. of debentures and under the trust agreement dated October 1, 1930, $211,000. of debentures, a total of $687,300. of debentures.

Fidelity-Philadelphia Trust Company as depositary under the Pioche Debenture-Holders' Agreement dated as of February 1, 1939 has advised the Committee that $399,100. of debentures outstanding under the trust agreement dated January 2, 1929 and $198,500. of the debentures outstanding under the trust agreement dated October 1, 1930, a total of $597,600. of debentures, have been deposited with Fidelity as depositary under said agreements.

Copies of the Pioche Settlement Agreement dated as of July 8, 1942, and of the Pioche Merger Agreement dated as of October 23, 1942, have been filed with Fidelity, all parties desire that the reorganization provided for by said settlement and merger agreements shall be consummated prior to December 31, 1943 and Pioche Consolidated has requested both Fidelity as depositary and the undersigned Committee to furnish it with a list of the names and addresses of those who have deposited debentures with Fidelity as depositary giving the amounts of income bonds and shares of stock to be issued to them respectively in exchange for their debentures upon the completion of the reorganization immediately after the consumation of the merger as provided in the Settlement and Merger Agreements.

The Merger Agreement provides for the issue of only $602,050. of income bonds against the de-

posited debentures. The amount of the outstanding debentures to wit: $687,300. exceeds by $85,250. the amount of income bonds to be issued as provided by the agreements. This discrepancy is to be reconciled by the surrender by Pioche Consolidated at the closing of $70,000 of debentures (those held by District National Bank and Kansas City Structural Steel Company) for cancellation against which no new securities will be issued and by the surrender to Fidelity as depositary of the non-negotiable receipt for $40,000. of deposited bonds now held by E. W. Clark & Co. This receipt is held as collateral for a loan which is to be paid by Pioche Consolidated at the final closing. Of the $40,000 of bonds represented by this receipt, $15,250. are to be cancelled without the issuance of any new securities. This cancellation together with the cancellation of $70,000, of bonds surrendered as above will reconcile the apparent discrepancy between the amount of outstanding debentures and the amount of income bonds to be issued under the agreements.

Upon the payment of this loan the balance of the debentures represented by the non-negotiable receipt outstanding in the name of E. W. Clark & Co. will be credited to the following parties.

Laurence R. Lee, Leesburg, Va.	$12,500,
Theodore E. Brown, Brush Hill Road, Milton, Mass.	2,250.
Albert P. Gerhard, 1930 Land Title Bldg., Philadelphia, Pa.	10,000.
	$24,750.

These parties upon the consummation of the reorganization will be entitled to income bonds and shares of stock of surviving company on the same terms and conditions as other owners of deposited debentures.

The cancellation of $15,250. of debentures represented by the non-negotiable receipt issued by Fidelity as depositary in the name of E. W. Clark & Co. will reduce the amount of deposited debentures against which income bonds and shares of stock of surviving company are to be issued to $582,350. There remain undeposited debentures outstanding to the amount of $19,700. together with scrip and coupons appertaining thereto, the holders of which have approved the settlement provided for in the Settlement and Merger Agreements and which are to be surrendered by Pioche Consolidated for cancellation by Fidelity as trustee at the time of the final closing. It is the understanding of the Committee that surviving company will issue the income bonds and shares of stock, to which the owners of these debentures are entitled, directed to them. This will be satisfactory to the Committee although the agreements provide the shares of stock of surviving company shall be delivered to Fidelity for the account of outstanding debentures.

It will be noted that income bonds are not issuable in any denominations less than $100. This will meet the requirements of all the holders of deposited debentures except Theodore E. Brown who paid only $2,250. on account of his subscription to $5,000. of debentures. He will also be entitled to a fraction of

a share of stock. This is a matter to be adjusted by Pioche Consolidated with Mr. Brown.

Based on the facts as above set forth, there has been prepared at the direction of this Committee, a list of the names and addresses in which the $582,-350. of income bonds and the shares of stock appertaining thereto as provided in the Settlement and Merger Agreements shall be issued, copies of which list are enclosed.

This letter is requested Fidelity-Philadelphia Trust Company as depositary to mail the list of names and addresses above referred to Pioche Mines Consolidated, Inc., Pioche, Nevada, immediately together with a copy of this letter.

This will also authorize Fidelity as depositary to deliver all of the deposited debentures, coupons and scrip to Fidelity-Philadelphia Trust Company, trustee under the above mentioned trust agreements, for cancellation upon the receipt by Fidelity of written instructions from the undersigned Committee that the terms and conditions of the settlement agreement have been fulfilled.

In our opinion, it will be necessary to have a closing settlement in Carson City or Reno immediately after the consummation of the merger or contemporaneously therewith for the consummation of the reorganization. At this settlement the debentures, coupons and scrip not already delivered to the trustee as well as all other outstanding obligations shall be delivered for cancellation.

Committee's attorneys are in correspondence with Messrs. Dwight, Harris, Koegel and Caskey repre-

senting other parties at the litigation and settlement agreement relating to details of the settlement. You will be advised further concerning these details as soon as these attorneys arrange them.

It is anticipated that these arrangements will provide that the written instructions from the undersigned Committee above referred to will be forwarded to Committee's representative at the closing settlement for delivery to the trustee or its representative at the proper time in the proceedings.

Very truly yours,

Pioche Debenture Holders' Committee

By .....

PHC;mac

EXHIBIT W-10

Requisition for Issuance of New Income Bonds and Common Stock of Pioche Mines Consolidated, Inc., for Delivery to Holders of Convertible Debentures Dated January 2, 1929 and October 1, 1930, Deposited With Fidelity-Philadelphia Trust Company Under Pioche Debenture-Holders' Agreement Dated as of February 1, 1939, Upon Consummation of Reorganization of Old Company.

Name and Address	Deposited Debentures	New Income Bonds	Denominations	*Shares of Common Stock
Helen F. Brinley, Montgomery Ave., Chestnut Hill, Philadelphia, Pa.	$ 1,000	$ 1,000	1 at 1M	1,650
Francis F. Brockie, c/o The Pennsylvania Co. for Ins. on Lives and Granting Annuities, 15th & Chestnut Sts., Philadelphia..	500	500	1 at $500	825
Henry G. Brooks, Public Service Bldg., 60 Batterymarch St., Boston, Mass.	2,500	2,500	2 at 1M 1 at $500	4,125

Name and Address	Deposited Debentures	New Income Bonds	Denominations	*Shares of Common Stock
Brown Bros. Harriman & Co., 1531 Walnut St., Philadelphia..	2,000	2,000	2 at 1M	3,300
Chellowe Corporation, c/o First National Bank, Philadelphia....	10,000	10,000	10 at 1M	16,500
Estate of Clarence M. Clark, Deceased, 1531 Locust St., Philadelphia, Pa.	10,000	10,000	9 at 1M 10 at $100	16,500
Frank T. Clark, c/o E. W. Clark & Co., 1531 Locust St., Philadelphia, Pa.	5,000	5,000	5 at 1M	8,250
Eleanor F. Clark, c/o Arthur S. Sinkler, Lancaster, Pa.....	200	200	2 at $100	330
Joseph S. Clark, 1531 Locust St., Philadelphia, Pa.	20,000	20,000	2 at 10M	33,000
Joseph S. Clark, Jr., 1320 Packard Bldg., Philadelphia, Pa.....	2,000	2,000	2 at 1M	3,300
Eckley B. Coxe, 3rd, 1421 Chestnut St., Philadelphia, Pa.....	2,000	2,000	2 at 1M	3,300
Jacob S. Disston, Jr., c/o Liberty, Title & Trust Co., Philadelphia, Pa.	5,000	5,000	5 at 1M	8,250
Fidelity-Philadelphia Trust Co., Depositary 135 South Broad Street, Philadelphia, Pa.	116,250	116,250	1 at $50 7 at $100 1 at $500 45 at 1M 7 at 10M	306,826
Fidelity-Philadelphia Trust Co., Robert Dechert, Surviving Executors of the Will of Alan D. Wilson, dec'd, 135 S. Broad St., Philadelphia, Pa.	100	100	1 at $100	165
Frederick Fraley, City Line, Overbrook, Phila., Pa.	2,000	2,000	2 at 1M	3,300
Donald McKay Frost, 84 State St., Room 601, Boston, Mass.....	2,000	2,000	2 at 1M	3,300
Albert P. Gerhard, 1608 Walnut St., Philadelphia, Pa.....	50,000	50,000	5 at 10M	82,500

Name and Address	Deposited Debentures	New Income Bonds	Denominations	*Shares of Common Stock
H. P. Glendinning, c/o Glendenning & Co., 123 S. Broad St., Philadelphia, Pa.	1,000	1,000	1 at 1M	1,650
Dr. Charles J. Hatfield, c/o The Henry Phipps Inst., 7th & Lombard Sts., Philadelphia, Pa.	500	500	1 at $500	825
Robert F. Holden, 1528 Walnut St., Philadelphia, Pa.	5,000	5,000	5 at 1M	8,250
R. H. Knode, 2500 Fidelity-Phila. Tr. Bldg., Philadelphia, Pa.	2,500	2,500	2 at 1M 1 at $500	4,125
Edward B. Leisenring, Fidelity-Phila. Tr. Bldg., Philadelphia	5,000	5,000	5 at 1M	8,250
Frank H. Maguire, c/o Glendinning & Co., 123 S. Broad St., Philadelphia, Pa.	3,000	3,000	3 at 1M	4,950
Joseph B. Mayer, Apt. 12F, 270 Park Ave., New York, N. Y.	5,000	5,000	5 at 1M	8,250
Francis F. Milne, Jr., Devon, Pa.	8,000	8,000	8 at 1M	13,200
J. Kearsley Mitchell, Bryn Mawr, Pa.	25,000	25,000	2 at 10M 5 at 1M	41,250
F. Corlies Morgan, Germantown Trust Co., Exr. Germantown & Chelton Ave., Philadelphia, Pa.	10,000	10,000	1 at 10M	16,500
Samuel W. Morris, c/o Girard Trust Co., Philadelphia, Pa.	25,000	25,000	2 at 10M 5 at 1M	41,250
F. Eugene Newbold, 1517 Locust St., Philadelphia, Pa.	2,500	2,500	2 at 1M 1 at $500	4,125
Virginia C. Newbold, 1517 Locust St., Philadelphia, Pa.	1,900	1,900	1 at 1M 1 at $500 4 at $100	3,135
Virginia Newbold, c/o The Penn. Co. for Ins. on Lives and Granting Annuities, 15th & Chestnut Sts., Philadelphia, Pa.	600	600	1 at $500 1 at $100	990
Isaac W. Roberts, Belmont Ave., Bala Cynwyd, Pa.	5,000	5,000	5 at 1M	8,250
T. Williams Roberts, 1012 Land Title Bldg., Philadelphia, Pa.	5,000	5,000	5 at 1M	8,250

Name and Address	Deposited Debentures	New Income Bonds	Denominations	*Shares of Common Stock
Nicolas G. Roosevelt, c/o W. H. Newbold Son & Co., 1517 Locust St., Philadelphia, Pa.	10,000	10,000	1 at 10M	16,500
Hugh D. Scott, c/o Old Colony Trust Co., 17 Court St., Boston	2,000	2,000	2 at 1M	3,300
Mrs. Conroy Clark Sinkler, Lancaster, Pa.	300	300	3 at $100	495
Paul C. Wagner, Paoli, Pa.	5,000	5,000	5 at 1M	8,250
Miriam C. Wallis, c/o Philip Wallis, Esq., 1429 Walnut St., Philadelphia, Pa.	500	500	1 at $500	825
Henry M. Watts, c/o Glendinning & Co., 123 S. Broad St., Philadelphia, Pa.	3,000	3,000	3 at 1M	4,950
Ezra B. Whitman, West Biddle St. at Charles, Baltimore, Md.	1,000	1,000	1 at 1M	1,650
David E. Williams, Jr., 1416 Chestnut St., Philadelphia, Pa.	5,000	5,000	5 at 1M	8,250
Willoughby Co., 15th Flr., 1500 Walnut St., Philadelphia Pa.	115,000	115,000	11 at 10M 5 at 1M	189,750
Sarah A. F. Zimmermann, 1401 Arch St., Philadelphia, Pa.	40,000	40,000	4 at 10M	66,000
E. W. Clark & Co., 16th & Locust Sts., Philadelphia, Pa.	40,000	40,000	4 at 10M	66,000
H. Gates Lloyd and Richard W. Lloyd, Trustees, c/o Drexel & Co., 1500 Walnut St., Philadelphia, Pa.	15,000	15,000	1 at 10M 5 at 1M	24,750
Anderson & Co., 135 South Broad Street Philadelphia, Pa.	10,000	10,000	8 at 1M 3 at $500 5 at $100	16,500
Part of Debentures deposited by E. W. Clark & Co., authorized to be cancelled	15,250	0		0
Totals	$597,600	$582,350		1,075,891

* Certificates for shares of Common Stock to be issued in denomina-

tions matching denominations of new Income Bonds requested to be issued at rate of 165 shares for each $100 Debenture.

Fidelity-Philadelphia Trust Company, Depositary
By H. W. Latimer, Assistant Secretary

November 22, 1943

EXHIBIT W-11

Hartshorn and Walter, Accountants and Auditors
50 Congress St., Boston, Mass.

John Janney, President February 15, 1944
Pioche Mines Consolidated, Inc., Pioche, Nevada

Dear Mr. Janney:

We have received a letter signed by Mr. Percy H. Clark, Chairman of the Pioche Debenture-Holders' Committee, in reply to our request for a definite figure representing the face amount of debentures which the Committee represents which have consented to the settlement agreement. We quote his reply below:

"This will acknowledge receipt of your letter of February 10, 1944. The face amount of debentures of Pioche Consolidated which our Committee represents which have consented to the Settlement Agreement is $597,600. I trust this is the information you require."

For your information, we submit a reconciliation of this amount with the amount shown on the list of consenting debenture holders which we understand you have received from Mr. Clark.

Debentures represented by the Committee which have consented		$597,600.00
Deduct,—Unpaid subscriptions pledged with E. W. Clark & Co. as collateral for a loan represented by debentures deposited by the Committee with Fidelity-Philadelphia Trust Co.:		
Laurence R. Lee	$10,500.00	
Dr. Frederick Fraley	2,000.00	
Theodore E. Brown	2,750.00	15,250.00
Total per list of Consenting Debenture Holders		$582,350.00

This information may be further summarized as follows:

Consents secured by Committee	$582,350.00
Consents secured by John Janney	17,500.00
Debenture Holders whose consents have not been secured	2,200.00
Total	$602,050.00

We will await your repy before proceeding with the preparation of the pro-forma balance sheet and financial statements in final form.

Very truly yours,

/s/ Hartshorn and Walter

EXHIBIT W-12

Pioche Mines Consolidated, Inc.
Pioche, Nevada

Fidelity Philadelphia Trust Co., April 17, 1944

Philadelphia, Pa.

Dears Sirs:

We are sending you under separate cover by express the following securities:

Thirty Year Bonds			Stock Certificates	
Number	Amount	Name	Certificate No.	No. Shares
151	$ 1,000.00	Helen F. Brinley	1	1,650
651	500.00	Francis F. Brockie	2	825
154-155	2,000.00	Brown Bros. Harriman & Co.	4	3,300
156-165	10,000.00	Chellowe Corporation	5	16,500
166-174,801-810	10,000.00	Estate of Clarence M. Clark	6	16,500
175-179	5,000.00	Frank T. Clark	7	8,250
811-812	200.00	Eleanor F. Clark	8	330
1-2	20,000.00	Joseph S. Clark	9	33,000
180-181	2,000.00	Joseph S. Clark, Jr.	10	3,300
182-183	2,000.00	Eckley B. Coxe, 3rd	11	3,300
184-188	5,000.00	Jacob S. Disston, Jr.	12	8,250
813-819,653,189-233,3-9	116,200.00	Fidelity-Philadelphia Trust	57	306,826
820	100.00	Fidelity-Philadelphia Trust	14	165
234-235	2,000.00	Frederick Fraley	15	3,300
236-237	2,000.00	Donald McKay Frost	16	3,300
10-14	50,000.00	Albert P. Gerhard	17	82,500
238	1,000.00	H. P. Glendinning	18	1,650
654	500.00	Dr. Charles J. Hatfield	19	825
239-243	5,000.00	Robert F. Holden	20	8,250
244,245,655	2,500.00	R. H. Knode	21	4,125
246-250	5,000.00	Edward B. Leisenring	22	8,250
251-253	3,000.00	Frank M. Maguire	23	4,950
254-258	5,000.00	Joseph B. Mayer	24	8,250
259-266	8,000.00	Francis F. Milne, Jr.	25	13,200
15,16,267-271	25,000.00	J. Kearsley Mitchell	27	41,250
17	10,000.00	F. Corlies Morgan	28	16,500
18,19,272-276	25,000.00	Samuel W. Morris	29	41,250
277,278,656	2,500.00	F. Eugene Newbold	30	4,125
279,657,821-824	1,900.00	Virginia C. Newbold	31	3,135
658,825	600.00	Virginia Newbold	32	990
280,284	5,000.00	Isaac W. Roberts	33	8,250
285-289	5,000.00	T. Williams Roberts	34	8,250
20	10,000.00	Nicholas G. Roosevelt	35	16,500
290,291	2,000.00	Hugh D. Scott	36	3,300
826-828	300.00	Mrs. Conway Clark Sinkler	37	495
292-296	5,000.00	Paul C. Wagner	38	8,250
659	500.00	Miriam C. Wallis	40	825
297-299	3,000.00	Henry M. Watts	41	4,950

Thirty Year Bonds			Stock Certificates	
Number	Amount	Name	Certif-icate No.	No. Shares
300	1,000.00	Ezra B. Whitman	42	1,650
301-305	5,000.00	David E. Williams, Jr.	50	8,250
21-31,306-310	115,000.00	Willoughby Company	52	189,750
32-33	40,000.00	Sarah A. F. Zimmermann	53	66,000
40,311-315	15,000.00	H. Gates Lloyd & Richard W. Lloyd, Trustees	55	24,750
316-323,660-662,829-833	10,000.00	Anderson & Co.	56	16,500
Total	**$539,800.00**			1,005,766

On Your list of securities we find Henry G. Brooks for $2,500 bonds and 4,125 shares of common stock. These must be deposited with the Nevada Court wherein Mr. Brooks on order of the court has been allowed to intervene as a party denying the right of the debenture holders' committee to represent his bonds, and constitutes an issue in the case now pending in the U. S. Court for the District of Nevada, and will remain an issue to be disposed of by order of the court unless sooner disposed of by dismissal of the action as provided for in the settlement agreement.

Included in the list of $40,000 of bonds claimed by E. W. Clark and Co., as collateral to their note are Theodore E. Brown, for $2,250 and L. R. Lee for $10,500.

Messrs. Brown and Lee have likewise been interpleaded as parties in the Nevada action denying the right of E. W. Clark and Co., to possession of their bonds as collateral. These bonds must likewise be subject to the order of the court unless sooner dis-

posed of by the dismissal of the action as provided in the settlement agreement.

The $40,000 of bonds to E. W. Clark and Co. as collateral must therefore be held subject to receipt of evidence from E. W. Clark and Co. that they have authority to use $40,000 of bonds as collateral, which is a disputed issue in the court as above stated. The auditors have been requested to submit certified copy of the authorization for E. W. Clark and Co., to hold these bonds as collateral.

Also we are sending 30 year Income Notes in total face amount of $35,000 in name of Fidelity Philadelphia Trust Company, in denominations of $5,000 each, making seven 30 year Income Notes No. 1 to 7, inclusive. This is in compliance with 1-C of the settlement agreement which provides that $35,000 of Income Notes shall be delivered to Fidelity Philadelphia Trust Company for attorneys fees for attorneys for Fidelity Philadelphia Trust Company and Debenture Holders' Committee.

Income Bonds, Income Notes and Stock Certificates are being sent you in accordance with the provisions of the settlement agreement and merger agreement, printed copy of which is hereto attached, and in accordance with the list received from you at the direction of the debenture holders' committee and enclosed in your letter of November 22, 1943, with the exceptions above stated.

We call your attention to the provisions of the settlement agreement, Clause C-2 relating to "reasonable reorganization expense" which provides for the payment of the reasonable fee and disbursements for the debenture trustee.

We are advised that the reasonable fee of the debenture trustee with respect to reorganization expenses as well as the disbursements for the debenture trustee with respect thereto are to be discharged by this company as provided in said settlement agreement. We therefore ask for an itemized statement from you of your disbursements made in respect to reorganization expenses and of your fee as depositary, and for the distribution of these securities.

By Order of the Board of Directors.

[Seal] Pioche Mines Consolidated, Inc.
/s/ John Janney, President.

Attest: /s/ E. G. Woods, Secretary

[Printer's Note: Exhibit W-13 is a duplicate of DM-25 which is set out at page 350.]

[Endorsed]: Filed Oct. 23, 1947.

[Title of District Court and Cause]

MOTION FOR ORDER DIRECTING DEPOSIT IN COURT

Defendant, Pioche Mines Company, hereby moves the above entitled Court, pursuant to Rule 64 of the Rules of Civil Procedure for the District Courts of the United States, and Nevada Compiled Laws §8747 for an order of this Court directing plaintiff, Fidelity-Philadelphia Trust Company to deposit with this Court, or the properly authorized officers of this Court, all of the debentures issued by defendant, Pioche Mines Consolidated, Inc., which are now held by said plaintiff, Fidelity-Philadelphia

Trust Company as set for in the Supplemental Complaint on file herein, together with the authority for holding them, said debentures and authority to be held in the custody of this Court, subject to further order of this Court, to be made after notice to all parties to this action; said deposit to include, as well as debentures, every evidence of right arising therefrom or connected therewith, for the reasons as set forth in the affidavits of John Janney and E. G. Woods attached to a similar Motion heretofore filed by defendant, Pioche Mines Consolidated, Inc., and marked respectively, "Exhibit A" and "Exhibit B" thereto.

/s/ DOUGLAS A. BUSEY
Attorney for Defendant,
Pioche Mines Company

Notice of Motion

To: Messrs. Thatcher, Woodburn & Forman,
Messrs. Clark, Hebard & Spahr

Please take notice, that the undersigned will bring the above Motion on for hearing before this Court at its courtroom in Reno, Nevada on the 10th day of November, 1947, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

/s/ DOUGLAS A. BUSEY
Attorney for Defendant,
Pioche Mines Company

Acknowledgment of Service attached.

[Endorsed]: Filed Oct. 23, 1947.

[Title of District Court and Cause]

AFFIDAVIT CONTRA MOTION FOR DEPOSIT IN COURT

Commonwealth of Pennsylvania,
County of Philadelphia—ss:

Miles S. Altemose, being first duly sworn, deposes and says:

That he is a Vice-President of Fidelity-Philadelphia Trust Company (hereinafter referred to as "Fidelity"), one of the plaintiffs in the above entitled action; that as such Vice President he is in charge of Fidelity's Corporate Trust Department and authorized to execute this affidavit for and on behalf of Fidelity; that he has been in charge of said Department either as a Vice-President or an Assistant Secretary of Fidelity continuously since 1920; that the principal value of corporate trusts now being administered by his said Department approximates $600,000,000; that he is personally familiar with the matters and things averred in the pleadings filed in the above entitled action, insofar as such matters and things relate to Fidelity's participation therein and interest as Trustee under the two Pioche Trust Agreements, dated January 2, 1929 and October 1, 1930, respectively, and as Depositary under the Pioche Debenture Holders Agreement dated February 1, 1939; that he has read the affidavits of John Janney and E. G. Woods in support of defendants' "Motion for Order Directing Deposit in Court," filed October 21, 1947 in the above entitled action; and that deponent executes this affidavit as a counter-affidavit to correct certain

misstatements of fact and erroneous conclusions contained in the affidavits of the said Janney and Woods, insofar as said affidavits aver failure on the part of Fidelity to comply in any respect with obligations imposed on it as Trustee and Depositary as aforesaid.

Wherefore, deponent further avers that:

1. Fidelity has at no time caused or contributed to any uncertainty, nor has it caused or contributed to any confusion in connection with the status of Debentures originally certified by it as Trustee as having been issued under the aforesaid Trust Agreements of 1929 and 1930, or with respect to the status of Debentures deposited with it as Depositary under the Pioche Debenture Holders Agreement dated as of February 1, 1939, or otherwise deposited with it, pursuant to the proposed Plan of Reorganization for Pioche specified in the "Settlement Agreement" dated as of July 8, 1942.

2. It is not the usual practice for a corporate trustee to require an independent audit as a basis for its certification of the number and principal amount of securities issued by an obligor under an indenture or trust agreement under which it acts as trustee, inasmuch as such certification can be made from its own books of original entry maintained for the purpose and which, so far as the trustee is concerned, reflect a demonstrable fact, viz., the number and principal amount of securities received by the trustee from the obligor for certification.

3. Defendants admit, in paragraph 4 of their Answer to the Supplemental Complaint filed in the above entitled action, that Six Hundred Eighty-

seven Thousand Three Hundred Dollars ($687,300) of Debentures were certified by Fidelity as having been issued under the above mentioned Trust Agreements, so that there would appear to be no dispute as to this point.

4. Defendants, in paragraph 3 of their Answer to the Supplemental Complaint filed in this action, admit that there has been deposited with Fidelity Five Hundred Ninety-seven Thousand Six Hundred Dollars ($597,600) principal amount of said Debentures (together with scrip and coupons), which Debentures were deposited with Fidelity under the Debenture Holders Agreement of February 1, 1939, so that there would appear to be no dispute as to the amount of Debentures so deposited; and that defendants further admit in said paragraph 3 that there has not been deposited with Fidelity Eighty-nine Thousand Seven Hundred Dollars ($89,700) principal amount of Debentures, which fully accounts for the difference between the number of Debentures certified by Fidelity as having been issued under the Trust Agreements and the number of Debentures deposited with it pursuant to the aforesaid Depositary Agreement, and that if there is any confusion as to the status of the Eighty-nine Thousand Seven Hundred Dollars ($89,700) principal amount of Debentures not deposited, such confusion cannot be charged to Fidelity, inasmuch as all information in regard to the status of said undeposited Debentures (all Debentures having been issued in bearer form) is wholly within the knowledge of the defendants, wherefore deponent is unable to comprehend what useful purpose the audit or audits re-

ferred to in said affidavits of Janney and Woods could have served, assuming that there was any obligation on the part of Fidelity to request such audits, which obligation Fidelity denies, insofar as its duties as Corporate Trustee and Depositary are concerned.

5. Fidelity at no time has obstructed, delayed or thwarted the action of the Stockholders Meeting and Directors Meetings, as is averred by the said John Janney in his aforesaid affidavit, but on the contrary Fidelity has at all times evidenced its willingness to do all in its power to perform all obligations which it is obligated to perform, and in support of this averment deponent refers to the copies of letters written by Fidelity and included among the copies of correspondence attached to the affidavits of the said Janney and Woods, which letters fully disclose Fidelity's position in the matter and its constant endeavor to cooperate and to perform its proper obligations.

6. In further support of Fidelity's position, there are attached hereto and marked Exhibits "F-1" to "F-3", inclusive, copies of correspondence between Fidelity and Pioche, copies of which are not included among the copies of letters attached to the aforesaid affidavits of Janney and Woods.

7. Reference to the copies of letters attached to the aforesaid affidavits of Janney and Woods, and to the copies of letters attached hereto, will disclose that the matters and things apparently in dispute involve questions of law, the construction to be placed on written instruments, and the mechanics of handling a settlement such as that contemplated by

the Settlement Agreement of July 8, 1942, wherefore Fidelity has acted in this matter in accordance with instructions received from competent legal counsel, which counsel until April of 1944, insofar as Fidelity is concerned in the matter, was Percy H. Clark, Esquire, a senior member of the Philadelphia law firm of Clark, Hebard and Spahr, and which counsel in this matter since April of 1944 has been its general counsel, the Philadelphia law firm of Morgan, Lewis & Bockius.

8. Insofar as the aforesaid affidavits allege and repeat and incorporate therein by reference the averments in various pleadings filed by the defendants in the above entitled action and in the proposed Counterclaim which defendants have asked leave to file, charging Fidelity with conspiracy, collusion, misconduct and lack of good faith in the performance of its duties as Corporate Trustee and Depositary, Fidelity again denies each and every one of said averments, and incorporates herein by reference all such denials contained in the aforesaid pleadings filed in the above entitled action by it as one of the plaintiffs.

/s/ MILES S. ALTEMOSE

Sworn to and subscribed before me this 3rd day of November, 1947.

[Seal] /s/ W. HOTZ, Notary Public

[Printer's Note: Exhibits F-1, F-2 and F-3 are identical to Exhibits 59, 62, and 65 reproduced in full at pages 528, 533 and 541 of this printed Record.]

[Endorsed]: Filed Nov. 8, 1947.

[Title of District Court and Cause]

AFFIDAVIT OF THOMAS B. K. RINGE CONTRA MOTION FOR ORDER DIRECTING DEPOSIT IN COURT

Commonwealth of Pennsylvania,
County of Philadelphia—ss:

Thomas B. K. Ringe, being first duly sworn, deposes and says:

That he is a resident of the City and County of Philadelphia, Pennsylvania; that he is a member of the law firm of Morgan, Lewis & Bockius, with offices at 2107 Fidelity-Philadelphia Trust Building, Philadelphia, Pennsylvania; that the said firm of Morgan, Lewis & Bockius acts and has acted over a period of many years as general counsel for Fidelity-Philadelphia Trust Company (hereinafter referred to as "Fidelity"), one of the plaintiffs in the above entitled action; that when his said firm was first consulted by Fidelity, in the year 1944, in regard to the matters and things referred to in the above entitled action, either deponent personally or one of his partners or associates, to wit, H. O. Sebring, Jr. and Randal Morgan, 3rd, advised Fidelity in regard to its position as Corporate Trustee and Depositary; that he is the Thomas B. K. Ringe, Thomas B. Ringe and "Mr. Ringe" referred to in the correspondence attached to the affidavits of John Janney and E. G. Woods in support of the "Motion for Order Directing Deposit in Court" which has been filed in the above entitled action; that at all times deponent, his said partner and associate, and

the firm of Morgan, Lewis & Bockius have endeavored to use their best efforts as counsel for Fidelity to promote the consummation of the Reorganization Plan and the Settlement Agreement of July 8, 1942, as clearly appears from the letters written from time to time by Fidelity to Pioche Mines Consolidated, Inc. and by deponent to Pioche counsel in New York, i.e., Richard E. Dwight, Esquire, of the firm of Dwight, Harris, Koegel & Caskey, copies of which letters are attached to the affidavits of John Janney and E. G. Woods in support of the aforesaid Motion; that, in spite of such efforts, very little progress could be made for reasons disclosed in said letters, particular reference in this connection being made by deponent to Exhibit "DM 31" attached to the affidavit of the said Janney.

That, in order to complete the pertinent correspondence between the parties and their respective counsel, as attached to the aforesaid affidavits, there is attached hereto, made a part hereof and marked "R-1" a true and correct copy of a letter dated April 2, 1945, written by deponent to Richard E. Dwight, Esquire, counsel for Pioche Mines Consolidated, Inc., which letter was not included by the affiant, John Janney, among the exhibits attached to his aforesaid affidavit.

/s/ THOMAS B. K. RINGE

Sworn to and subscribed before me this 4th day of November, 1947.

[Seal] /s/ ETHEL F. ALLEN,
Notary Public

My Commission expires Jan. 7, 1951.

EXHIBIT R-1

Morgan, Lewis & Bockius
2107 Fidelity-Philadelphia Trust Building
Philadelphia 9, Pa.

April 2, 1945

Re: Pioche Mines, Consolidated

Richard E. Dwight, Esq.
Dwight, Harris, Koegel & Caskey, Esqs.
100 Broadway,
New York, N. Y.

Dear Mr. Dwight:

This is in further reply to your letter of March 16, 1945, the receipt of which I have already acknowledged. I have now had an opportunity to give full consideration to the requests which you make on behalf of Pioche Mines Consolidated and to discuss them with Fidelity-Philadelphia Trust Company. I will treat them separately.

First, the request that the Trust Company advise Pioche Mines Consolidated of its acceptance of the new debentures of the reorganized company and accompanying stock in payment of and to be exchanged for the debentures of the old company,—with the understanding that neither the old debentures (nor the trust indentures under which they were issued) will now be cancelled.

In my letter of February 27th I stated that the Trust Company was prepared to make the exchange as soon as the essential steps preliminary thereto

had been taken and pointed out that the Trust Company has not yet received certificates for the following:

1. $89,700 face amount of old debentures.
2. $62,250 face amount of new income bonds.
3. 107,521 shares of common stock of the new company.

It has been our opinion that the certificates for all of these debentures, income bonds and common stock which have not yet been received should be in the hands of the Trust Company before the exchange is made. However, it is quite clear that for reasons not entirely clear to me your clients have reached the conclusion that unless these securities are now accepted, irrespective of the fact that these essential preliminaries have not yet been cared for, the Trust Company will have failed to exhibit the good faith which the circumstances require.

In order to break the deadlock, which certainly should not continue, the Trust Company (with our approval) has decided to accept the new securities forwarded for the exchange and has done so as of today upon the express understanding that the steps which have been described as essential to the consummation of the settlement will be taken with reasonable promptness by your clients, and in accordance with what I understand to be your assurances. I must now look to you as counsel for Pioche to see this through.

Certainly there should be no objection to someone representing both Pioche Mines Consolidated and

the interested individuals discussing with the Trust Company, or with me as counsel for the Trust Company, the clearing away of the problems described in my letter of February 27th. There are of course the reorganization expenses which must be cared for. These things must be done in some way and I do hope that it will be possible for you or someone in your office to cooperate with us in seeing that these matters are cleared.

In this connection, Fidelity has requested me to take up the several matters discussed in Mr. Janney's letter of April 17, 1944. I am now doing so and will write you with respect thereto within the next few days.

Second, the request that the Trust Company should immediately instruct its attorneys in Nevada to consent to and arrange for the discontinuance, without costs, of the existing litigation.

While we should have much preferred to have had in the possession of the Trust Company the balance of the old debentures, new income bonds and stock, and have had completed certain other steps in the settlement, before taking either of the steps requested, we have reached the conclusion, for the reasons hereinbefore stated, that this second request should be granted also and the Trust Company is now prepared to join with other interested counsel in the discontinuance of both the original suit and the counter-claim. Accordingly, appropriate instructions are being forwarded to counsel in Nevada for discontinuance of the litigation, including both the original suit and all counter-claims in such manner

as will dissolve all attachments and satisfy all liability under any bonds of indemnity. It is understood, of course, that the discontinuance of this litigation "without costs" means "without court costs" and will not affect the obligation for the payment of reasonable reorganization expenses, including the bill rendered for services of the Trust Company as Trustee, which payment remains to be made.

Please be assured that the taking of these steps without the prior completion of other essential steps has been because of the desire of the Trust Company to do all within its power towards the completion of the settlement with as much expedition as possible and to establish a basis of further dealing which will permit the remaining problems to be cleared upon a foundation of mutual good faith.

We reiterate that in our opinion Fidelity has not been in default in any particular.

Would it not now be possible for you to advise me with respect to the matters remaining to be disposed of?

Most sincerely yours,

/s/ MORGAN, LEWIS & BOCKIUS

TBKR/R

[Endorsed]: Filed Nov. 8, 1947.

[Title of District Court and Cause]

MOTION TO INTERVENE

Richard K. Baker, hereby moves the Court for

leave to intervene as a party defendant in this action, and to file his Complaint in Intervention, attached hereto, setting forth the claims and defenses for which intervention is sought, and as grounds for intervention states: that applicant is an indispensible party to this action who will be bound by a judgment in the action; that the issues and controversies presented by plaintiffs' Supplemental Complaint herein, and defendants' answer thereto, are based principally upon the construction, interpretation and effect of the Settlement Agreement (attached to plaintiffs' Supplemental Complaint as "Exhibit A"): that Applicant is a party to said Settlement Agreement whose rights will be directly affected and adjudicated by a judgment in this action; that applicant's claims and defenses and the main action have questions of law and fact in common.

In making said motion, applicant will use and rely upon all the records, files and proceedings in this action, and the Affidavit of Richard K. Baker entitled "Affidavit in Support of Motion to Intervene and for Support of Motion to Deposit in Court," served herewith.

Dated: January 22, 1948.

/s/ SPRINGMYER V. THOMPSON
/s/ BRUCE R. THOMPSON
Attorneys for Applicant for Intervention.